# THE LEGAL FOUNDATIONS OF THE JURISDICTION, POWERS, ORGANIZATION AND PROCEDURE OF THE COURTS OF PENNSYLVANIA IN THEIR HANDLING OF CASES OF JUVENILE OFFENDERS AND OF DEPENDENT AND NEGLECTED CHILDREN


"It is argued by the appellee that the Act of 1913 uses the language 'properly charged therewith under the laws of this Commonwealth;' and that the words 'laws of this Commonwealth' refer to the statutory law. We do not so regard it. We are clear that the words 'laws of the Commonwealth' comprehend the common law, the statutes and the authoritative decisions of the Supreme Court." Colucci's Estate, 83 Superior Court 224.

NOVEMBER 15, 1926.

**Children's Commission of Pennsylvania**
1525 LOCUST STREET
PHILADELPHIA

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# FOREWORD

When the Legislature assigned to the Children's Commission the study of "all the laws relating to child welfare"[1] an extensive area of complex and confused legal enactment and interpretation was brought under review. Within this area no section stood out more prominently than the laws empowering the courts to deal with delinquent, incorrigible, neglected and dependent children, and no subject seemed in greater need of analysis and clarification. The following presentation of this material will, it is thought, make unnecessary any other proof of the extent and complexity of this field of law.

Obviously it is only as this body of legal material and the practice of it are thoroughly known and carefully analysed that changes or amendments can be undertaken with a fair degree of assurance that the actual result will be as intended. The Commission is strongly of the opinion that sound law will be consistently developed in this field only as bench, bar, and social agencies dealing directly with those children who fall within the legal categories of the courts' jurisdictions, are willing to study the whole body of law within this field and to bring to each case an accurate legal and social interpretation of the issues at stake.

Upon such study depends the growth of sound law both as it protects the rights of individuals and as it furthers the development of social institutions designed to save children from unnecessary hardship and to surround those endangered by evil influences or inclined to careers of lawlessness with influences which develop individual character and social worth.

Following the method instituted in its study of the procedure in legal adoptions, the Commission presents herewith a statement of the existing laws and their interpretation through court decisions on this subject. Unlike the former analysis, this one contains material on practice and on model laws. It is cast in the form of questions and answers—a device long known to the law for classifying pertinent information on specific points.

It is as an aid to continuing and practical study that this analysis is issued by the Children's Commission. It was prepared by the staff as a body of material to illuminate for the layman as well as for the attorney and the social worker, the legal foundations which underlie the day by day practice of the courts as they handle the cases of child offenders and of dependent and neglected children.

1. Act of July 11, 1923, P. L. 994, and Act of April 4, 1925, P. L. 144.

There is no pretense that all of the subjects which are touched by this inquiry have been exhausted. The plan has been to explore fairly thoroughly the legal basis of the juvenile court in Pennsylvania and to surround the exposition with enough substantive law on child care and protection, and facts on the actual practices followed to give some perspective and to indicate some of the more important relationships which the juvenile court now sustains to the rest of the judicial system and to the child caring agencies of the community.

The Commission is greatly indebted to a number of busy persons who took time to read all of this manuscript or extensive portions of it. Whatever of value it may now have is due in part to their suggestions and criticisms.

In the interest of co-operative efforts in behalf of the unfortunate children who find their way into courts, the Commission invites every reader or user to report the discovery of any inaccuracy or misleading statement. The pressure of time under which it was prepared would make it almost miraculous if no inaccuracies had been allowed to creep in.

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# I. POWERS AND PROCEDURE OF THE COURTS IN THE CASES OF CHILD OFFENDERS.

1. Q. Does Pennsylvania have a separate juvenile court?

   A. No. Certain courts are required to follow special procedures in the cases of juvenile offenders.

2. Q. What courts have these special procedures?

   A. Outside of Philadelphia and Allegheny Counties the Courts of Quarter Sessions sit as juvenile courts.

   In Philadelphia the Municipal Court and in Allegheny County the County Court conduct these special procedures.

Sec. 1, Act of June 28, 1923, P. L. 898, amending Sec. 1 of the Juvenile Court Act of April 23, 1903, P. L. 274; for Philadelphia, Sec. 1, Act of July 17, 1917, P. L. 1015, amending Sec. 11, Act of July 12, 1913, P. L. 711; for Allegheny County, Sec. 1, Act of May 23, 1923, P. L. 324; amending Sec. 1, Act of March 19, 1915, P. L. 25.

Manual of General Statutes Relating to Children, Sections 339, 342, 346.

3. Q. If these various courts have special procedures in dealing with juvenile offenders, why can they not be said to constitute separate juvenile courts?

   A. Because the Supreme Court of Pennsylvania has held that the Juvenile Court Act of April 23, 1903, did not create a separate juvenile court. "No new court is created by the act under consideration . . . Jurisdiction is conferred upon that court (the Court of Quarter Sessions) as the appropriate one, and not upon a new one created by the act. The Court of Quarter Sessions is not simply a criminal court. The constitution recognizes it, but says nothing as to its jurisdiction. Its existence antedates our colonial times, and, by the common law and statutes, both here and in England, it has for generations been a court of broad general police powers in no way connected with its criminal jurisdiction. . . .

   "It is a mere convenient designation of the Court of Quarter Sessions to call it, when caring

Commonwealth v. Fisher, 213 Pa. 48.

for children, a juvenile court, but no such court, as an independent tribunal, is created. It is still the Court of Quarter Sessions before which the proceedings are conducted, and though that court, in so conducting them, is to be known as the juvenile court, the records are still those of the Court of Quarter Sessions.''

4. Q. What is the essential difference between the work of the Quarter Sessions sitting as a juvenile court and its usual handling of offenders as a criminal court of record?

Commonwealth v. Carnes, appellant, 82 Super. Ct. 335.

A. The regular Court of Quarter Sessions is to try persons accused of crime. The juvenile court is to make dispositions of the custody and to provide oversight of child offenders. ''The purpose of the Act of April 23, 1903, P. L. 274, is to prevent a trial and thus save children under the age of sixteen years, from the ordeal of a trial if the child's own good and the best interests of the Commonwealth justify it.''

5. Q. Do not Philadelphia and Allegheny Counties have separate juvenile courts?

For Philadelphia, Sec. 1, Act of July 17, 1917, P. L. 1015, amending Sec. 11, Act of July 12, 1913, P. L. 711; for Allegheny County, Sec. 1, Act of May 23, 1923, P. L. 324, amending Sec. 1, Act of March 19, 1915, P. L. 25. Originally the Allegheny County Court was created by the Act of May 5, 1911, P. L. 198.

Manual, 342, 346. The constitutionality of the acts creating these courts was attested in Gottschall, appellant, v. Campbell, 234 Pa. 347; Commonwealth v. Hopkins, appellant, 241 Pa. 213; Gerlach, appellant, v Moore, 243 Pa. 603.

Their relation to the Juvenile Court Act is set forth in Commonwealth v. Rispo, 30 Pa. Dist. 459; Commonwealth ex. rel. Kaercher v. Sachse, 65 Super. Ct. 536.

A. No, not essentially. Both the Municipal Court of Philadelphia and the Allegheny County Court were created to relieve the Common Pleas and Quarter Sessions Courts of a mass of minor cases, among them, the cases of juvenile offenders. In some classes of cases the new courts have been given exclusive jurisdiction. This is true of juvenile court cases. In other classes of cases the new courts received only concurrent jurisdiction. In the handling of the cases of juvenile offenders, these new courts are in general operating under the same laws as the Quarter Sessions Courts in other judicial districts. The few modifications in organization and procedure permitted in the legislation creating and regulating the work of these courts will be brought out later in questions relating to these details.

6. Q. Why do these two courts seem more like separate juvenile courts than those of many of the other counties?

A. Because:

1. They hold court in quarters apart from the city or county court houses.

Sec. 8, Act of July 12, 1913, P. L. 711; Sec. 2, Act of March 19, 1915, P. L. 5, supplementing Act of May 5, 1911, P. L. 198.

2. They have elaborately organized staffs of probation officers.

Manual, 343, 347.

3. When one of the judges of the court is assigned to the hearing of juvenile cases, he must, according to law, remain on the bench for at least one year—a requirement not strictly adhered to in practice.

7. Q. In the other counties where there is more than one judge, must the juvenile court work be assigned to one judge for any specified length of time?

A. No. The law says that "The powers of the court . . . may be exercised by any one or more judges of such court who may be assigned for the purpose at a session of said court."

8. Q. To what kinds of juvenile offenders does the juvenile court jurisdiction attach?

A. The Court of Quarter Sessions sitting as a juvenile court is to "have and possess full and exclusive jurisdiction in all proceedings affecting the treatment and control of . . . incorrigible and delinquent children under the age of sixteen years." The Philadelphia Municipal Court has exclusive jurisdiction in the cases of *delinquent* children but no mention is made in its special act regarding exclusive jurisdiction over incorrigible children. (See question 10 for definition of "delinquent child.")

Sec. 1, Act of June 28, 1923, P. L. 898, amending Sec. 1, Act of April 23, 1903, P. L. 274.

Manual, 339.

Sec. 1, Act of July 17, 1917, P. L. 1015, amending Sec. 11, Act of July 12, 1913, P. L. 711.

Manual, 342

The Allegheny County Court has been given "sole jurisdiction" in all proceedings relating to *incorrigible* and *delinquent* children.

Sec. 1, Act of May 23, 1923, P. L. 324, amending Sec 1, Act of March 19, 1915, P. L. 25.

Manual, 346.

9. Q. How is the term "incorrigible" defined in the law?

A. "The words 'incorrigible children' shall mean any child who is charged by its parent or guardian with being unmanageable."

Sec. 1, Act of June 28, 1923, P. L. 898, amending Sec. 1, Act of April 23, 1903, P. L. 274.

Manual, 339.

10. Q. How is the term "delinquent" defined in the law?

Sec. 1, Act of June 23, 1923, P. L. 893, amending Sec. 1, Act of April 23, 1903, P. L. 274.

Manual, 339.

A. "The words 'delinquent child' shall mean any child including such as have heretofore been designated incorrigible children who may be charged with the violation of any law of this Commonwealth or the ordinance of any city, borough or township."

11. Q. Have these terms been further elucidated through court decisions?

In re Shelton, 11 Pa. Dist. 155.

A. Yes, before the Act of April 23, 1903, P. L. 274, was passed. Early in 1902 they were explained as follows: "Incorrigibility and delinquency are two different offenses. One has in it the elements of continuous disobedience of parental commands, viciousness and generally bad conduct. The other may be, and often is, a single offense."

12. Q. Why is it that the juvenile court, which has been given full and exclusive jurisdiction over all law breaking and unmanageable children does not have jurisdiction over children who commit murder?

Sec. 2, Act of June 23, 1923, P. L. 893, amending Sec. 2, Act of April 23, 1903, P. L. 274.

Manual, 340.

A. The Juvenile Court Act as now amended specifies that the court may exercise its powers "whenever any magistrate or justice of the peace shall commit a child arrested for any indictable offense *other than murder* or for the violation of any other laws of this Commonwealth or the ordinance of any city, borough or township." As originally passed in 1903 the Quarter Sessions sitting as a juvenile court could receive and dispose of a child who had committed any offense, including murder, if either the committing magistrate, the district attorney or the trial judge certified that it was his opinion that the good of the child and the interests of the state did not require that it have a criminal prosecution or trial.

13. Q. Is it in any way possible for the juvenile court now to take jurisdiction in the case of a child accused of murder?

A. It is probable that the police authorities now have the right to choose between taking the child before a magistrate for a regular criminal prosecution and taking him on petition as a delinquent child, into juvenile court.

This point was discussed prior to the last legislation on this subject.

Commonwealth v. Rispo, 30 Pa. Dist 459.

On May 9, 1919, a girl, fifteen, was arrested for homicide and upon inquest by the Coroner was held for action by the grand jury which, two weeks later, on May 27, 1919, found two bills against her, one for murder and the other in separate counts, for voluntary and involuntary manslaughter.

Meanwhile she had a hearing on May 13, 1919, in juvenile court and was discharged from custody. Her counsel then moved to have the grand jury indictments quashed on the grounds that the juvenile court had "exclusive jurisdiction over delinquent children under sixteen years of age, that no indictment or trial of any such child for crime can be had unless, said court holds it for trial," and that as the juvenile court had discharged her from custody, no other tribunal had the power to bring her to trial or act upon her case. The motions to quash the indictments were overruled at which time the Court of Oyer and Terminer pointed out that "However comprehensive may be the term 'delinquent child' such child is to be considered in two aspects. In one aspect arise the questions relative to its care, custody and control in the nature of a guardianship, in which connection the Municipal Court has now exclusive jurisdiction of the proceedings. In the other aspect, the delinquent child is viewed as one formally charged with and indicted for crime; one whose guilt or innocence can only be determined upon a trial. This has to do with the criminal jurisdiction of the court, and is beyond the purview of the juvenile court law, which has naught to do with trials for crime.

"The Municipal Court has co-ordinate jurisdiction with the Court of Quarter Sessions for the trial of many offenses. As to trials for certain crimes, including murder and voluntary manslaughter, however, it has no jurisdiction.

"In cases of homicide, it is the policy of the law that there should be the fullest inquiry and investigation. The Juvenile Court Act and Municipal Court Act have left unimpaired the laws in vogue for years as to the procedure for such inquiry and investigation through the coroner's inquest, the action of the grand jury and the criminal jurisdiction of the Courts of Quarter Sessions and Oyer and Terminer; nor

has there been any change in the law relative to responsibility of minors for crimes committed. The Juvenile Court legislation is intended to operate in harmony and not in conflict with the administration of the criminal law. The judges of the Courts of Quarter Sessions and of Oyer and Terminer may be relied upon in the trials conducted before them to recognize the benevolent purpose of the legislation referred to and to act in accordance with its spirit."

Since this case the Juvenile Court Act has been amended, (Act of June 28, 1923, P. L. 898), but in such a way as more definitely to except murder from its jurisdiction.

Commonwealth v. Cavalier, appellant, 284 Pa. 311.

In an outstanding recent case which went to the Supreme Court, it was said of a boy fourteen years and six months of age, who had murdered and robbed his grandmother: "In view of the earnestness of the argument of appellant's counsel as to his youth, it may not be amiss for us to call attention to the fact that from very early times down to the present it has always been the law that all persons above the age of fourteen, whether they exceed that age by a few months or many years, are presumed to possess the capacity to commit any crime . . . The common law rules concerning children under the age of seven, between seven and fourteen and over fourteen are followed in th United States, except where varied by statute." It is a question whether the Juvenile Court Act, in its definition of delinquency does not vary the common law by statute to the extent that the action by petition might be successfully invoked if there were no pressure from other authorities for a criminal proseeution.

14. Q. Are there other legal definitions of the terms "delinquent child" and "incorrigible child?"

A Standard Juvenile Court Law published by the National Probation Association, Inc., 1926, p. 9.

A. Under the auspices of the National Probation Association a model juvenile court law has been drafted by a committee including a number of the leading juvenile court judges of the country. This proposed law has but one eategory for offending children—"delinquent." This term is defined as follows:

"The words 'delinquent child' include:

(a) A child who has violated any law of

the State or any ordinance or regulation of a subdivision of the State.

(b) A child who by reason of being wayward or habitually disobedient is uncontrolled by his parent, guardian or custodian.

(c) A child who is habitually truant from school or home.

(d) A child who habitually so deports himself as to injure or endanger the morals or health of himself or others.''

On account of the literal meaning of the word incorrigible as a condition that cannot be corrected or as depraved beyond reform, there has been objection to its use as describing any child. The term ''wayward'' is preferred as describing those who are unmanageable by their parents or other custodians. In Massachusetts this designation is used and defined as follows: ''A child between seven and seventeen years of age who habitually associates with vicious or immoral persons, or who is growing up in circumstances exposing him to lead an immoral, vicious or criminal life.''

15. Q. Can the exercise of jurisdiction by the juvenile court be attacked as violating the constitutional guarantees of the right of trial by jury and of not being deprived of liberty except through due process of law? (Art. I, Sec. 6 and Sec. 9.)

Commonwealth v. Fisher, 213 Pa. 48.

A. No. A child held for and disposed of by juvenile court does not have a trial so that none of the constitutional guarantees are applicable.

16. Q. Has this decision of the Supreme Court been held as wholly convincing?

Edward Lindsey: The Juvenile Court Movement from a Lawyer's Standpoint, Annals of American Academy of Political and Social Science, Vol. LII, p. 144.

A. No. ''According to this decision the constitutional guaranty against deprivation of life, liberty or property without due process of law is limited to persons actually brought to trial for crime. It is impossible to escape the impression that the public opinion favoring this legislation had infected the court and that in the opinion it is endeavoring to find a legal ground for sustaining the act, but without conspicuous success.''

17. Q. Can a child offender demand to be taken into a court where he does have the constitutionally guaranteed right of trial by jury?

Commonwealth v. Carnes, 82 Super. Ct. 335.

A. No. The Superior Court has held that "The right to trial by jury vouchsafed to us by constitutional guarantees is the right to be tried in that manner, if tried. The constitution has never been held to guarantee to the citizen the right to insist that he be tried for a crime if the State determines that it is to the interest of the citizen and the State that he shall be saved from such an ordeal."

18. Q. If the taking of juvenile offenders into the juvenile court is not subject to review as "due process of law" what kind of legal action is it?

Ex parte Crouse, 4 Wharton 9.

A. It is the exercise of the power of *parens patriae.* This has been explained in two famous Pennsylvania decisions. In 1839 the Supreme Court said that "It is to be remembered that the public has a paramount interest in the virtue and knowledge of its members, and that of strict right, the business of education belongs to it. That parents are ordinarily intrusted with it is because it can seldom be put into better hands; but where they are incompetent or corrupt, what is there to prevent the public from withdrawing their faculties, held, as they obviously are, at its sufferance? The right of parental control is a natural, but not an unalienable one. It is not excepted by the declaration of rights out of the subjects of ordinary legislation; and it consequently remains subject to the ordinary legislative power which, if wantonly or inconveniently used, would soon be constitutionally restricted, but the competency of which, as the government is constituted, cannot be doubted. As to abridgment of indefeasible rights by confinement of the person, it is no more than what is borne, to a greater or less extent, in every school; and we know of no natural right to exemption from restraints which conduce to an infant's welfare. Nor is there a doubt of the propriety of their application in the particular instance. The infant has been snatched from a course which must have ended in confirmed depravity; and, not only is the restraint of her person lawful, but it would be an act of extreme cruelty to release her from it."

Commonwealth v. Fisher, 213 Pa. 48.

In 1905 that court said further: "The natural parent needs no process to temporarily deprive his child of its liberty by confining it in his own home, to save it and to shield it from

the consequences of persistence in a career of waywardness, nor is the State, when compelled, as *parens patriae,* to take the place of the father for the same purpose, required to adopt any process as a means of placing its hands upon the child to lead it into one of its courts. When the child gets there and the court, with the power to save it, determines on its salvation, and not its punishment, it is immaterial how it got there. The act simply provides how children who ought to be saved may reach the court to be saved. If experience should show that there ought to be other ways for it to get there, the legislature can, and undoubtedly will, adopt them, and they will never be regarded as undue processes for depriving a child of its liberty or property as a penalty for crime committed . . .

"There is no probability, in the proper administration of the law, of the child's liberty being unduly invaded. Every statute which is designed to give protection, care and training to children, as a needed substitute for parental authority and performance of parental duty, is but a recognition of the duty of the State, as the legitimate guardian and protector of children where other guardianship fails. No constitutional right is violated, but one of the most important duties which organized society owes to its helpless members is performed just in the measure that the law is framed with wisdom and is carefully administered. The conclusions above expressed are in accordance with adjudications elsewhere with but very few exceptions: Roth v. House of Refuge, 31 Md. 329; Ex parte Crouse, 4 Wharton 9; Tiedeman Lim., sec. 50; Prescott v. State, 19 Ohio St. 197; St. Mary's Industrial School v. Brown, 45 Md. 310; Farnham v. Pierce, 141 Mass. 203." (See Question 208 for further discussion of the origin of chancery powers and the *parens patriae.*)

Tiedeman, State and Federal Control of Persons and Property, II, p. 911 (1900).

Extreme views of the right of the State over the child have held that such right is absolute and that the rights and duties of parents were only such as were delegated to them by the State. Recent decisions by the U. S. Supreme Court have considerably modified this theory. The law today recognizes a natural right in parents to the custody and control of the children, circumscribed only by the police power of the State acting as the sovereign parent.

Meyer v. State of Nebraska, 262 U. S. 390; Pierce v. Society of Sisters, 268 U. S. 510 (the Oregon School Law case).

19. Q. Is the exercise of the power of *parens patriae* by the lower court subject to review on appeal?

Sec. 1, Act of June 1, 1915, P. L. 652.

Manual, 384.

A. Yes, but not as in criminal cases. The statute requires that "appeals shall lie as a matter of right to the Superior Court of this Commonwealth, upon the same terms and with the same regulations as are provided by existing laws in regard to appeals from any definitive sentence or decree of the Orphans' Court and in hearing such appeals the Superior Court shall consider the testimony as a part of the record."

20. Q. Have appeals on the merits of the case ever thus been taken?

Commonwealth v. Carnes, 82 Super. Ct. 335.

A. Yes. In 1923 a thirteen year old boy was charged with involuntary manslaughter and committed to the Pennsylvania Training School at Morganza. When he appealed his case, the Superior Court not only passed on several constitutional questions involved but also said: "The only other question which requires consideration is the sufficiency of the evidence to warrant the order of commitment . . . As appellant was charged with involuntary manslaughter, he was subject to the jurisdiction of the juvenile court. But the mere fact that a child under the age of sixteen years is before a judge of the juvenile court charged with a criminal offense, does not justify the taking of the child from the custody of its parents and its commitment to an institution. Nor would the fact that the evidence would have warranted a conviction by a jury of the crime charged require such commitment. It is the duty of the court to determine, in the light of the facts established by the evidence, what order the child's own good and the best interests of the State may require. An examination of the record has convinced us not only that the evidence was insufficient to have warranted a conviction upon an indictment for involuntary manslaughter, but that the killing was a pure accident.

"Nor does the evidence touching the general conduct and the environment of the child, considered with the evidence relating to the accident, establish any facts upon which the judicial mind could arrive at the conclusion that the child's own good and the best interests of the State required the order of commitment. We

are not unmindful that the judge of the court below had the advantage of seeing the defendant and all the witnesses and was in a better position than we are to come to a conclusion upon the evidence. But the whole record is so destitute of any facts justifying the commitment that we are constrained to hold that the learned judge committed reversible error in making the order."

Commonwealth v. Fisher, 27 Super. Ct. 175.

It is interesting to note that in the case of Commonwealth v. Fisher (213 Pa. 48), upon which the constitutionality of the Juvenile Court Act rests, no report of the testimony taken at the hearing of the case in the lower court was sent up with the appeal which went to both the Superior and the Supreme Courts. "If testimony was taken before the judge at the hearing, it has not been furnished us by the appellant."

21. Q. Does not this form of exercise of the *parens patriae* and the Juvenile Court Act in particular which sets apart children under sixteen who break a law from others who break the same law, create an unconstitutional form of class distinction?

Commonwealth v. Fisher, 213 Pa. 48.

A. No. The Supreme Court has held that this form of classification is entirely within the constitutional powers of the Legislature and has set forth its views as follows:

"The objection that 'the act offends against a constitutional provision in creating, by its terms, different punishments for the same offense by a classification of individuals, overlooks the fact, hereafter to be noticed, that it is not for the punishment of the offenders, but for the salvation of children, and points out the way by which the State undertakes to save, not particular children of a special class, but all children under a certain age, whose salvation may become the duty of the State in the absence of proper parental care or disregard of it by wayward children. No child under the age of sixteen years is excluded from its beneficent provisions. Its protecting arm is for all who have not attained that age and who may need its protection. It is for all children of the same class. That minors may be classified for their best interests and the public welfare, has never been questioned in the legislation relating to them. Under the Act of 1887, the classi-

fication of females under sixteen years of age means felonious rape, with its severe penalties for what may be done one day, though on the next it remains simple fornication, to be expiated by a mere fine. Other acts forbid the employment of minors under twelve years of age in mills; of any boy under fourteen or any female in anthracite coal mines; of minors under fourteen in and about elevators; of a boy under twelve or any female in bituminous coal mines; others make it a misdemeanor to furnish intoxicating drinks, by sale, gift or otherwise, to one under twenty-one and forbid the admission of any minor into certain places of amusement. Such classification is not prohibited by the constitution, and what has not been therein prohibited the Legislature may enact. Shortly after the adoption of our present constitution we said, in the leading case, Wheeler v. The City of Philadelphia, 77 Pa. 338; 'In like manner other subjects, trades, occupations, and professions, may be classified. And not only things but persons may be so divided. The *genus homo* is a subject within the meaning of the constitution. Will it be contended that as to this there can be no classification? No laws affecting the personal and property rights of minors as distinguished from adults? Or of males as distinguished from females? Or, in the case of the latter, no distinction between a feme convert and a single woman? What becomes of all our legislation in regard to the rights of married women if there can be no classification? And where is the power to provide any future safeguards for their separate estate? These illustrations might be multiplied indefinitely were it necessary.' ''

22. Q. What is the age limit for children brought before the juvenile court?

Sec. 1, Act of April 22, 1909, P. L. 119, amending Sec. 8, Act of April 23, 1903, P. L. 274.

Manual 383.

Juvenile Court No. 2725, 18 Pa. Dist. 79.

Juvenile Court No. 7943, 21 Pa. Dist. 535.

A. For an original contact with the court they must be under sixteen. That contact having once been made, the court may continue its supervision of the child to the age of twenty-one. After a juvenile court ward has been discharged by the court he cannot be returned to its guardianship if he is over the age of sixteen.

23. Q. If a ward of the juvenile court over the age of sixteen were arrested for an indictable offense

would he be brought back for hearing to the juvenile court?

Juvenile Court No. 2725, 18 Pa. Dist. 79.

A. Probably not in practice though the theory is not clear. Said the Philadelphia Court of Quarter Sessions in 1908: "Upon inquiry made by the court as to the practice prevailing in the courts of Allegheny County, it has been learned that where a child has been committed by the court under the provisions of the Act of April 23, 1903, the court maintains its jurisdiction of the child until the probation officer, . . . the institution . . . or association reports to the court that the child is no longer in need of the oversight and restraints, training and care intended to be given the child by its commitment, and the court retains and asserts its authority during the minority of the child, 'if necessary for the good of the child and the interest of the State.'" So far as is known no case has come to the courts where this authority was asserted as against a criminal jurisdiction. The possibility of such case arising is greatly minimized by the fact that in all but Philadelphia and Allegheny Counties the same judge usually sits in the juvenile and in the criminal courts. In the large places the work of criminal courts is so little correlated with that of the juvenile court that both could and do exercise jurisdiction and supervision over the same individual without either being aware of it.

24. Q. Is there any provision for special treatment of a child over sixteen who commits a crime?

A. No.

25. Q. Is the conduct of a child over sixteen subject to any special regulation?

Sec. 1, Act of July 17, 1917, P. L. 1015, amending Sec. 11, Act of July 12, 1913, P. L. 711.

A. Yes, to a very limited extent. In Philadelphia the misdemeanants' court has jurisdiction over children between sixteen and twenty-one who:

(1) Are accused of disorderly street walking,

(2) Are charged with being "disorderly" —children are deemed to be disorderly when they desert their homes without good and sufficient cause, or keep company with dissolute and vicious persons against the lawful commands of their parents,

(3) Disobey their parent's command,

(4) Are found idle in the streets.

Act of June 2, 1871, P. L. 1301.

Act of June 17, 1915, P. L. 1017.

When the House of Correction was established it was provided that children might be sent there for these various offenses by the magistrates, including the mayor and recorder. In 1915, the Municipal Court was given exclusive jurisdiction in these cases.

Sec. 1, Act of April 10, 1835, P. L. 133, supplementing Act of March 23, 1826, P. L. 133; Sec. 15, Act of April 22, 1850, P. L. 538.

Under the acts defining the powers of the Glen Mills Schools and of the Pennsylvania Training School at Morganza, the offense of incorrigibility was set up as a justification of commitment. It was specified that commitment might be made by an alderman or justice of the peace "on the complaint and due proof made to him by the parent, guardian, or next friend of such infant, that by reason of incorrigible or vicious conduct, such infant has rendered his or her control beyond the power of such parent, guardian or next friend, and made it manifestly requisite, that from regard for the morals and future welfare of such infant, he or she should be placed under the guardianship" of the school.

When the parent or guardian, from "moral depravity or otherwise" was incapable or unwilling to exercise the proper care and discipline of the child, anyone apparently might make the complaint that the child was in need of care by reason of vagrancy, or of incorrigible or vicious conduct.

26. Q. In what way does the standard juvenile court law set up the age limits within which the juvenile court is to exercise jurisdiction in the case of offending children?

Standard Juvenile Court Law published by the Nation Probation Association, Inc., 1926, pp. 9 and 12

A. "Child" means any person under eighteen years of age. The court is given original and exclusive jurisdiction in the cases of all children who are accused of having violated any law or who are "delinquent" for any other reason. (See Question 14.) When once the juvenile court jurisdiction has attached it continues to the age of twenty-one unless waived by the court.

27. Q. Had distinctions in the attitude toward and treatment of child offenders been made in law prior to the founding of juvenile courts?

Blackstone: Commentaries on the laws of England, Book IV, Chapter 2.

A. Blackstone summarizes the situation as follows: "Infants under the age of discretion ought not to be punished by any criminal prosecution whatever. What the age of discretion is, in

various nations, is matter of some variety. The civil law distinguished the age of minors, or those under twenty-five years old, into three stages: *infantia,* from the birth till seven years of age; *puerita,* from seven to fourteen; and *pubertas,* from fourteen upwards. The period of *pueritia,* or childhood, was again subdivided into two equal parts: from seven to ten and a half was *aetas infantiae proxima;* from ten and a half to fourteen was *aetas pubertati proxima.* During the first state of infancy and the next half-stage of childhood, *infantiae proxima,* they were not punishable for any crime. During the other half-state of childhood, approaching to *puberty,* from ten and a half to fourteen they were indeed punishable, if found to be *doli capaces,* or capable of mischief, but with many mitigations, and not with the utmost rigour of the law. During the last stage, (at the age of puberty, and afterwards), minors were liable to be punished, as well capitally as otherwise.

"The law of England does in some cases privilege an infant under the age of twenty-one, as to common misdemeanours, so as to escape fine, imprisonment, and the like; and particularly in cases of omission, as not repairing a bridge, or a highway, and other similar offenses; for, not having the command of his fortune till twenty-one, he wants the capacity to do those things which the law requires. But where there is any notorious breach of the peace, a riot, battery, or the like, (which infants, when full grown, are at least as liable as others to commit) for these an infant, above the age of fourteen, is equally liable to suffer as a person of the full age of twenty-one.

"With regard to capital crimes, the law is still more minute and circumspect; distinguishing with greater nicety the several degrees of age and discretion. By the ancient Saxon law, the age of twelve years was established for the age of possible discretion, when first the understanding might open; and from thence till the offender was fourteen it was *aetas pubertati proxima,* in which he might or might not be guilty of crime, according to his natural capacity or incapacity. This was the dubious stage of discretion: but under twelve it was held that he could not be guilty in will, neither after fourteen could he be supposed innocent, of any capital crime which he in fact committed. But by the law, as it now stands, and has stood at

least ever since the time of Edward the Third, the capacity of doing ill, or contracting guilt, is not so much measured by years and days as by the strength of the delinquent's understanding and judgment. For one lad of eleven years old may have as much cunning as another of fourteen; and in these cases our maxim is that '*malitia supplet aetatem.*' Under seven years of age, indeed, an infant cannot be guilty of felony, for then a felonious discretion is almost an impossibility in nature; but at eight years old he may be guilty of felony. Also, under fourteen, though an infant shall be *prima facie* adjudged to be *doli incapax,* yet if it appear to the court and jury that he was *doli capax,* and could discern between good and evil, he may be convicted and suffer death. Thus a girl of thirteen has been burned for killing her mistress, and one boy of ten, and another of nine years old, who had killed their companions, have been sentenced to death, and he of ten years actually hanged; because it appeared, upon their trials, that the one hid himself, and the other hid the body he had killed, which hiding manifested a consciousness of guilt, and a discretion to discern between good and evil. And there was an instance in the last century where a boy of eight years old was tried at Abingdon for firing two barns; and, it appearing that he had malice, revenge, and cunning, he was found guilty, condemned, and hanged accordingly. Thus, also, in very modern times, a boy of ten years old was convicted on his own confession of murdering his bedfellow, there appearing in his whole behaviour plain tokens of a mischievous discretion; and, as the sparing this boy merely on account of his tender years might be of dangerous consequence to the public by propagating a notion that children might commit such atrocious crimes with impunity, it was unanimously agreed by all the judges that he was a proper subject of capital punishment. But, in all such cases, the evidence of that malice which is to supply age ought to be strong and clear beyond all doubt and contradiction.''

These theories are reaffirmed in Pennsylvania decisions. See Commonwealth ex rel. Joseph v. M'Keagy, 1 Ashmead 248.

28. Q. What statutory efforts, prior to 1903, had been made to mitigate the rigors of the criminal law in Pennsylvania in its operation on children?

A. All of the early efforts toward such mitigation were in the direction of finding places other than the regular penal institutions, to which children might be sent. The first of such efforts was the incorporation in 1826 of the House of Refuge, now known as the Glen Mills Schools. When this school was opened it was permitted Judges of the Courts of Oyer and Terminer, of Quarter Sessions and of the Mayor's Courts of Philadelphia, the aldermen, the justices of the peace and the managers of the almshouse and of the house of employment, to exercise their own judgment in sending to this institution, children who had been "taken up or committed as vagrants, or upon any criminal charge or duly convicted of criminal offenses." This first act enabled the institution to accept children on commitment only from these named courts in Philadelphia. Later legislation passed in 1827, 1835, 1850, 1854, 1867, 1899, 1901, 1903 and 1909 extended the field of service of this institution, not only geographically so that it could include children from all of eastern Pennsylvania, but also in the classes of cases, so that now juvenile offenders may be sent there in the discretion of any court with power to commit, even including the United States Courts. After a child is committed the school may exercise supervision over it until it has reached the age of twenty-one.

Act of March 23, 1826, P. L. 133.

Commonwealth ex. rel. Joseph v. M'Keagy, 1 Ashmead 248.

House of Refuge, appellant v. Luzerne County, 215 Pa. 429; Act of March 2, 1827, P. L. 76; Act of April 10, 1835, P. L. 133; Act of April 25, 1850, P. L. 448; Act of January 26, 1854, P. L. 12; Act of January 10, 1867, P. L. 1371; (Sec. 3, subsequently declared unconstitutional).

Act of March 22, 1899, P. L. 15; Act of May 11, 1901, P. L. 158; Act of March 27, 1903, P. L. 83; Act of March 24, 1909, P. L. 62.

In 1850 the institution now known as the Pennsylvania Training School at Morganza was chartered to serve Western Pennsylvania as Glen Mills served the eastern section. Legislation on the types of children admitted and the courts empowered to commit has in the main followed a course parallel to that in regard to Glen Mills. One important difference has developed, however. While Glen Mills has remained a private corporation, Morganza has become a public institution.

Act of April 11, 1850, P. L. 448; and Act of April 22, 1850, P. L. 538, with further legislation in 1855, 1857, 1862, 1868, 1879 and 1899.

In 1871 the Philadelphia House of Correction was chartered; in 1875 Homes for the Friendless might be used as places to commit "friendless, destitute or vagrant" children.

Act of June 7, 1923, P. L. 498, Sec. 203.

Act of June 2, 1871, P. L. 1301.

Act of April 12, 1875, P. L. 46.

In 1881 Huntingdon Reformatory was provided for first offenders, men and boys between the ages of fifteen and twenty-five.

Act of June 8, 1881, P. L. 63; Act of April 28, 1887, P. L. 63; Act of June 6, 1893, P. L. 326; Act of June 24, 1895, P. L. 265; Act of April 28, 1899, P. L. 73.

In 1893 incorporated societies for the protection of children from cruelty were authorized to receive into their care and custody on court

Act of June 8, 1893, P. L. 399.

commitment a "minor" who "by reason of incorrigible, unmanageable, vicious or wayward conduct" is beyond the control of parent or guardian, or a minor who was a vagrant or a minor who has been "duly convicted of any criminal offense."

Act of May 11, 1901, P. L. 187.

In 1901 judges of the Courts of Quarter Sessions and magistrates and justices of the peace throughout the Commonwealth were empowered to commit, with consent of parent, guardian or custodian, "vicious or incorrigible minors of the male sex," to the Catholic Protectory in Montgomery County.

29. Q. Had there been efforts in Pennsylvania prior to 1903 to modify the common law procedure and the statutory requirements for the handling of criminal cases in the interest of better care of children charged with violation of law?

A. Yes, twice. Attempts at modification of court procedure began apparently in 1893 when the Legislature passed a very brief act (No. 328), directing that no child under sixteen "under restraint or conviction" was to be placed in any cell or transported in any vehicle with adults charged with or convicted of any crime. It further specified that "all cases involving the commitment or trial of children for any crime or misdemeanor, before any magistrate or justice of the peace, or in any court, may be heard and determined by such court at suitable times to be designated therefor by it, separate and apart from the trial of other criminal cases, of which session a separate docket and record shall be kept."

Act of June 12, 1893, P. L. 459.

Courts for Trial of Infants, 14 Pa. Co. 254.

This act was declared unconstitutional in the following decision of the Bucks County Court:

"It is quite probable that this act became a law through inadvertence. It represents humanitarianism gone mad and is so clumsily drawn that it is next to impossible to understand its clear meaning. It appears, however, to contemplate the separation of criminals of one class, as defined by the act, from another class even where the necessities of the administration of justice require their joint presence.

"Some of the worst criminals known to the law are persons under sixteen years of age; frequently they are found in the company of other criminals engaged in the perpetration of crimes

of the highest grade, often displaying a capacity for leadership and a daring in advance of those in whose company they are caught. One of the worst cases of robbery we recall was that of two boys, one of whom was under and the other a few months over sixteen years old. Yet under the 2nd section of this law all such cases of the perpetration of crimes and offenses jointly must be separately examined into at the preliminary hearing and must be tried at courts held separate and apart from the regular courts, and what appears still more absurd, the record of the proceedings shall be kept in a separate docket, as if the entry of the trial of a youth in the same docket with that of an adult would taint the morals of the former. The remarkable part of the Act is that while it excludes crime children from the court room during the trial of adults it fails to make a similar provision against tainting the morals of innocent children. This Act if carried out as directed will require us to hold separate and special criminal courts with additional grand juries, travers juries, constables, etc. In cases of riot, conspiracy and the like, where the offense must be proved to have been committed by two or more persons and one of them should be under sixteen years of age, all the witnesses must be kept at the county seat through both courts or be brought back for the separate trials. It sometimes happens that convicted criminals are necessary witnesses to convict others. Exactly how such convicts are to be brought into court as witnesses and restrained and kept in safe custody the Act does not declare. Its enforcement must lead to great delay and inconvenience in dispatch of business and will entail upon the taxpayers a very heavy additional expense in conducting the court business. It is difficult to see what commensurate benefit will accrue to the community for all this increased trouble and expenditure of the public funds. It is fortunate for those who have the burden of taxation to bear that there is a restriction in the organic law against this extravagant legislation. The Constitution of the Commonwealth declares that trial by jury shall be as heretofore, that all courts shall be open and that all laws relating to the courts shall be general and of uniform operation, and the organization, jurisdiction and powers of all courts of the same class or grade so far as regulated by law, and the force and effect of the process

and judgments of such courts shall be uniform. This law is not general but special and applies to one class of persons only. It is not uniform in its operation since it affects the trial alone of persons under sixteen years of age and the manner of conducting the courts during such trials. The organization of such courts as regulated by it and the force and effect of the process under it are limited and not uniform as to all persons. It practically closes the courts during the trial of one class of persons against the admission and presence of the other class. The whole effect is to embarrass and defeat the prompt administration of justice.

"We regard the Act as unconstitutional and, therefore, decline to direct that separate and closed courts shall be held for the trial of either class of persons named in it, or to direct that the county shall purchase a new set of dockets for the purpose of recording therein the proceedings of such separate and exclusive courts."

Act of May 21, 1901, P. L. 279.

The second attempt was made in the Act of May 21, 1901, P. L. 279. If the first act erred on the side of brevity, the second seems to have been too comprehensive as is indicated by its lengthy title: "An Act to regulate the treatment and control of dependent, neglected and delinquent children, under the age of sixteen years; providing for the establishment of juvenile courts; regulating the practice before such courts; providing for the appointment of probation officers; prohibiting the commitment to jail or police station of a child under fourteen years of age; providing for the appointment, compensation and duties of agents of juvenile reformatories; imposing certain duties upon the Board of Public Charities of this State; regulating the incorporation of associations for the care of dependent, neglected or delinquent children; prohibiting foreign associations from placing children in homes in this State for adoption, or under indenture, except under certain conditions; providing for the appointment of a board of visitors, and repealing acts and parts of acts inconsistent with the provisions of this act."

The provisions relating to the organization of the contemplated juvenile court, called for the designation of one judge in the Courts of Oyer and Terminer and Quarter Sessions to hear children's cases. A special docket was re-

quired. A trial by jury could be demanded. In cases of riot and conspiracy, the child offender was to be tried with others implicated. Cases of delinquent children might be inaugurated on petition. Other provisions detail the court procedure to be followed.

This act was declared unconstitutional on the following grounds:

Mansfield's Case, 22 Super. Ct. 224.

The technical definitions of "dependent child" and "neglected child" in the body of the act are so much more comprehensive than might be inferred that the use of these words in the title of the act gives no adequate intimation of its scope and therefore offends against the constitutional requirement, Art. 3, Sec. 3, that "No bill, except general appropriation bills, shall be passed containing more than one subject which shall be clearly expressed in its title."

Moreover, the title did not make it clear that it was changing the whole course of judicial procedure and "the punishment or penalty of every offense, arising at common law or created by statute or municipal ordinance."

The wording of the clause which specified that children involved in the crimes of conspiracy and riot and other joint offenses, should be tried "as heretofore" was interpreted as conclusive evidence that it was new form of *trial* that the legislature was seeking to establish. Such being the case the constitutional guarantees of trial by jury must be preserved.

It was held that to require a child to demand a jury trial was a clog on the constitutional guarantee.

It was held that under the constitution the legislature could not, in creating a new court, legislate on the new bench a judge of the older courts.

Finally the classification of children used in the act was held to be a probable violation of the fourteenth amendment of the U. S. Constitution, which took away the power of any State to "deny to any person within its jurisdiction the equal protection of the laws," and a clear violation of Art. 3, Sec. 7, of the State Constitution.

Said the court, "The opening sentence of the enactment proclaims that 'this act shall only apply to children under the age of sixteen years, not now or hereafter inmates of a State institution or any training school for boys or indus-

trial school for girls, or some institution incorporated under the laws of this State.' The effect of this when considered in connection with the provisions with regard to delinquent children, is to divide the citizens of the State into two classes for the purpose of criminal procedure. The first class embraces all citizens over sixteen years of age and all those under that age who are inmates of a State institution, or training school for boys or industrial school for girls or some other institution incorporated under the laws of this State, which would include all asylums, schools and other public and private institutions controlled by any incorporated society; the second class includes all other children under sixteen years of age. When carried into effect novel results would ensue. Three boys, one sixteen years of age, the second fifteen years old, being an inmate of some institution incorporated under the laws of the State, and the third fifteen years of age, but living at home with his parents, commit the crime of murder; they are all above the age when the law, which in this respect has not been changed by this act, presumes responsibility for crime; they are entitled to separate trials; if this statute can be sustained, then two of them must be tried in the Court of Oyer and Terminer and punished according to pre-existing laws, but the third must be tried in the juvenile court and his case disposed of under the provisions of this statute. If the same boys sell newspapers on Sunday in violation of the Act of Assembly, or play ball upon the public street, in contravention of a municipal ordinance, the first two would be tried before a justice of the peace and escape with a small fine; the third would go to the juvenile court and remain under the control of the judges of that tribunal until he was twenty-one years of age, they having the power to confine him in the house of refuge or some other institution during that period, and, in the meantime, under the authority of this statute, he might be legally adopted by some stranger, without the consent of the boy or any person of his blood.''

In closing, the Court said: ''The motives of those whose influence procured this legislation are worthy of the highest commendation, those who labor to shield the young from evil influences benefit humanity; but benevolent enterprises must be carried out in a constitutional

manner. The Act of 1901 is an exotic, transplanted from a foreign soil, and sufficient care was not exercised to accommodate it to the conditions prescribed by our organic law."

This act was repealed by Sec. 12, Act of April 23, 1903, P. L. 274.

The ways in which the Juvenile Court Act of 1903 and its construction in Commonwealth v. Fisher avoided or evaded these various objections, have been recited in the foregoing questions and answers.

30. Q. What differences appear between the approach of legislation in Pennsylvania relating to child offenders and that of the civil and common law in their efforts to reckon with the fact of childhood in a violator of law?

A. In the case of Pennsylvania law, the effort has been to create and encourage child-caring institutions and agencies, reformatories of various kinds, societies to protect children from cruelty, special places of detention and the juvenile court. There seems to have been a great reluctance to make any general pronouncement either in statute or decision which makes an essential distinction between the offenses committed by children and those committed by adults. From the beginning there has been a bracketing together of children who actually violate law and those who are claimed to be incorrigible or unmanageable by the parent or natural custodian, or who are homeless or vagrant.

In the use of these child-caring agencies, the legislation in Pennsylvania seems until very recently to have contemplated a process of selection by which certain child offenders were to have been picked out for special efforts of "salvation." All of the early legislation was in the form of *permitting* the commitment of certain children to the special institutions. It was not until 1923, moreover, that the juvenile court was given "exclusive" jurisdiction and the following paragraph in the Juvenile Court Act itself modified:

Sec. 11, Act of April 23, 1903, P. L. 274, amended by Sec. 3, Act of June 28, 1923, P. L. 893.

"Nothing herein contained shall be in derogation of the powers of the Courts of Quarter Sessions and Oyer and Terminer to try, upon an indictment, any delinquent child who, in due course, may be brought to trial."

Even now the juvenile court's jurisdiction is not sufficiently exclusive to keep all children out of the criminal courts, even some below the common law age of discretion.

The common law rules on the other hand, seem to grow out of the recognition that the mind of every child within certain age limits differs in some important particulars from the mind of an adult endowed with a normal mental equipment. The very nature of the offenses committed by children is different at common law from the same acts if committed or omitted by an adult.

Harsh and grudging as are the common law rules from the modern humanitarian point of view, they at least made a beginning in fundamental legal theory which reckoned with the factor of childhood within the criminal law itself. They did in that way furnish a somewhat firmer foundation for an orderly process of growth in the law, than would seem to have been furnished by the legislation in Pennsylvania.

31. Q. What kind of jurisdiction is the exercise of the *parens patriae* in the case of the child offender in Pennsylvania?

A. This point is not settled in law, certainly not in Pennsylvania law. It seems to have been some form of chancery jurisdiction which was contemplated by Commonwealth v. Fisher.

"To save a child from becoming a criminal, or from continuing in a career of crime, to end in maturer years in public punishment and disgrace, the Legislature surely may provide for the salvation of such a child, if its parents or guardian be unable or unwilling to do so, by bringing it into one of the courts of the State without any process at all, for the purpose of subjecting it to the State's guardianship and protection. The natural parent needs no process to temporarily deprive his child of its liberty by confining it in his own home, to save it and to shield it from the consequences of persistence in a career of waywardness, nor is the State, when compelled as *parens patriae,* to take the place of the father for the same purpose, required to adopt any process as a means of placing its hands upon the child to lead it into one of its courts."

Appellate courts of other states have expressed this same view. Among the cases which might be cited is Wisconsin Industrial School for Girls v. Clark County, 103 Wis. 651, where it is said: "The power to place children under proper guardianship has been exercised by chancellors and judges exercising chancery powers from time immemorial. Said Lord Redesdale, in 1828, in Wellesley v. Wellesley, 2 Bligh. (N. S.), 124, the right of a Chancellor to exercise such power has not been questioned for 150 years."

In re Huntingdon Reformatory, 29 Pa. Dist. 186.

Commonwealth v. Carnes, 82 Super. Ct. 335.

Colucci's Estate, 83 Super. Ct. 224.

According to recent pronouncements the juvenile court conducts no trial and makes no attempt to judge regarding the criminal nature of the child's acts. It seeks only to make such disposition of him as will conduce to his welfare.

32. Q. Is there any basis in legal history for the exercise of chancery jurisdiction *in behalf of child offenders?*

Flexner and Oppenheimer, The Legal Aspect of the Juvenile Court, U. S. Children's Bureau Publication, No. 99, p. 7.

A. This is a debated point. It was recently pointed out that "The conception that the State owes a duty of protection to children that it does not owe to adults was established by the old courts of equity. From the earliest times children have been regarded as the wards of chancery. The crown was *parens patriae* and exercised its prerogative to aid unfortunate minors through the great seal. Generally the Chancellor acted only when a property right was involved, but this element went only to the exercise of jurisdiction, not to the jurisdiction itself, as Lord Eldon declared when he took away the children of the Duke of Wellesley because of his profligate conduct. It was not unusual for the Chancellor to concern himself with the religious education of a child; Shelley was deprived of the custody of his children because he declared himself to be an atheist. In this country the State has taken the place of the crown, the equity power has been delegated to a specialized court, and this court has been given the means of exercising jurisdiction whenever the interest of the State demands that the court shall intervene to save the child."

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Vigorous dissent from this opinion regarding legal history is expressed as follows: "The attempt has been made to cite this chancery jurisdiction at common law as a ground for

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sustaining the statutes under discussion. For example, in an address before the American Bar Association in 1909 on the juvenile court, Judge Julian W. Mack cited some early cases of the chancery protection of infants as affording the legal ground for sustaining the juvenile court jurisdiction. This theory, however, is entirely erroneous. Very different notions are involved. The chancery jurisdiction was always exercised for the protection of the individual rights of infants in respect to their persons or their property and not as asserting against either the paramount authority of the State. It originated in the feudal relation of lord and vassal and was first exercised principally to secure to the King his feudal dues. The extension of it in this country was purely individualistic and to supply the want of natural guardianship and to vindicate the rights of the minor as against the State as well as individuals. It appears, however, that this erroneous theory has had considerable influence over courts in sustaining statutes framed on entirely different and opposing theories.''

33. Q. Has this theory of chancery jurisdiction been held consistently by judicial authorities in Pennsylvania?

Black, appellaut v. Graham, et al., 238 Pa. 381.

A. No. Mr. Justice Brown, who wrote the opinion in Commonwealth v. Fisher in 1905, wrote another opinion in 1913, which bears on this subject. In this he held that the relationship of the juvenile court to the child ''is really penal in its nature.'' Incorrigible children committed by the juvenile court to board with families were held to be ''*quasi*-criminals.'' ''They have been apprehended for wrongs committed by them. All of these children are in effect prisoners.'' From this opinion Mr. Justice Moschzisker dissented. (See also Question 19 above on Act of 1915 relating to appeals.)

Administration of the Juvenile Court, 17 Pa. Dist. 207.

Juvenile Court No. 2725, 18 Pa. Dist. 79.

In an opinion given in 1908, Judge Staake of Philadelphia spoke of holding a child ''for trial in the Juvenile Court.'' Later in the same year in the case of a child held for larceny and put on probation, there is reference to the analogy of ''ward'' to justify keeping a child on probation after it had attained the age of sixteen.

Juvenile Court No. 7943, 21 Pa. Dist. 535.

In 1912, Judge Staake held that . . . ''the children committed by the juvenile court are

not convicted for crimes and misdemeanors, but were delinquents or incorrigibles, whose status was fixed by the provisions of the Act of April 23, 1903, P. L. 274, and its supplements. Such children when adjudged, after a proper hearing, as delinquents or incorrigibles, become wards of the court, subject to its jurisdictional care . . . ''

Mayers, Sheriff v Northampton County, 22 Pa. Dist. 757.

In a 1913 decision of a county court it was held, ''Where the child is guilty of a criminal offense and is a delinquent, there the charge is, of course, a 'criminal' case.''

Act of June 7, 1907, P. L. 438.

Some of the older legislation speaks of the ''trial'' of a child.

In the actual practices followed in some of the juvenile courts in the State there is much that still smacks of criminal procedure and of prosecution of the child.

34. Q. Is the ''guardianship'' conferred by the juvenile court when it commits a child to the probation officer for care the same kind of guardianship as that conferred by the Orphans' Court when it appoints a ''guardian of the person?''

Black, appellant v. Graham, et al., 238 Pa. 381.

Sec. 5, Act of April 23, 1903, P. L. 274; Sec. 6 of this act amended by Act of June 12, 1919, P. L. 445.

Manual, 379.

A. No. ''Guardianship may mean mere protection, and the term used in the Act of 1903 is not equivalent to 'guardian of the person' as used in the Act of 1911. (The School Code, Act of May 18, 1911, P. L. 309, Sec. 1402.) The latter is a well known relation, established either by appointment of the Orphans' Court or by the will of a child's parent. That is the sense in which the term 'guardian of the person' is used in the Act of 1911 . . . We are of the opinion that 'the guardianship' mentioned in the Juvenile Court Act does not mean 'guardian of the person,' as used in the Act of 1911. It cannot be so understood unless the meaning of the former term were extended by implication, which is an unreasonable construction in this instance.''

The nature of the guardianship and custody which is exercised by an institution or a child-placing society to whom a child has been committed is very vague. It is thought that possibly an institution becomes a guardian of the person while the child is in custody. This does not, however, include child-placing agencies.

35. Q. Is the jurisdiction as now exercised by juvenile courts open to question in such a way that it might be successfully attacked?

A. It is possible that it would be greatly curtailed if a series of cases under it were taken to higher courts.

Edward Lindsey: The Juvenile Court Movement from a Lawyer's Standpoint, Annals of the American Academy of Political and Social Science, Vol. LII, pp. 145, 146.

"Many of the provisions of the Juvenile Court Acts are clearly in conflict with constitutional provisions and this conclusion can only be escaped by evasions. In the case of commitment to an institution there is often a very real deprivation of liberty nor is that fact changed by refusing to call it punishment or because the good of the child is stated to be the object. The only logical theory for their complete justification is the extreme socialistic theory of the functions of the State. But this is only a verbal justification at most for in spite of sonorous language as to saving the child and affording it protection, care and training by the State, there has been scant provision for making good any of these so far as the State is concerned. What usually happens is that the child is handed over to some organization or institution (sometimes partly subsidized with State money, it is true) which in some cases does its work well and in others badly.

"Perhaps it may be premature to regard the constitutional questions as settled. No doubt the courts have been right in refusing to declare these acts unconstitutional in their entirety and not all the features are discussed in the decisions. The questions presented in most of the cases have been predicated upon parental rights and these have been presented as though they were purely private rights. It is strange that the public nature of the rights involved has been so little recognized. It is also true that in the majority of cases involved the parties are unable through poverty or ignorance or both to make a contest . . . As a matter of fact, however, it is not applied to the dominant social class and if ever it is so applied it will undoubtedly be largely modified . . . . The vague and unlimited nature of the powers granted to the court would seem to call for some further definition and specification."

36. Q. Has the question been raised of the necessity of the court arriving at some expressed conclusion with regard to whether the child is or is not guilty of that of which he has been accused, regardless of what his needs may be?

Edward Lindsey: The Juvenile Court Movement

A. Yes. In 1914 this point was made as follows by Hon. Edward Lindsey: "The child who

from a Lawyer's Standpoint, Annals of the American Academy of Political and Social Science, Vol. LII, p. 147.

comes into court accused of crime inevitably stands on a different footing from one who is there merely from parental neglect or from incorrigibility and should . . . Every child accused of crime should be tried and be subject to neither punishment nor restraint of liberty unless convicted. No child should be restrained simply because he has been accused of crime, whether he is guilty or not. Of course, if there is no denial of the charge, there is no neeessity for a trial. . . . There need be no punishment (i. e. even though the charges are proven to be true.)''

37. Q. Could proper and appropriate measures be taken for the care and education of delinquent and incorrigible children under the general police powers of the State?

Commonwealth v. Andrews, 211 Pa. 110.

A. Yes. It has been held that ''The promotion of public morals and public health is a chief function of government, to be exercised at all times as occasion may require. The methods by which the result may be accomplished depends upon the circumstances of the particular case, and the largest legislative discretion is allowed. . . . The remedy provided (in the statute there under review) is in consonance with the principle of preventive justice, which had early recognition in the common law, and which was said by distinguished authority to be 'preferable in all respects to punishing justice' 4B1. Comm. Chapter 18.''

38. Q. Are child offenders brought into other courts in the Commonwealth?

A. Yes.

39. Q. Under what circumstances can this be done?

Sec. 2, Act of June 28, 1923, P. L. 898, amending Sec. 2, Act of April 23, 1903, P. L. 274.

A. (1) As has been said, a child held for murder at a preliminary hearing before a magistrate must be certified to the Court of Oyer and Terminer for trial. As no child under sixteen can be taken for a preliminary hearing before a magistrate in Philadelphia, certification for trial for murder would be necessarily by a Municipal Court judge possibly sitting as a committing magistrate, probably in juvenile court.

(2) Whenever a child is arrested, outside of Philadelphia, for any offense whatever, he may be taken for a preliminary hearing before a

magistrate or justice of the peace. In the City of Pittsburgh, one of the eight magistrates' courts has been designated the Morals Court by ordinance passed in 1918. It instructed the police to take children as well as certain other types of offenders to this court for a preliminary hearing. Very recently the City Solicitor's office construed this ordinance as applying only to children over sixteen.

Sec. 3, Act of June 23, 1923, P. L. 898.

Manual, 386.

(3) Whenever any child over the age of 14 (fourteen) has been held at a preliminary hearing for an offense, other than murder, punishable by imprisonment in a State penitentiary, the judge of the juvenile court having jurisdiction may certify the case for a regular indictment, to the district attorney. The usual procedure in criminal cases is then followed in the Courts of Quarter Sessions and Oyer and Terminer.

Act of January 26, 1854, P. L. 12.

Manual, 449.

(4) According to a special act, some of the Courts of Common Pleas are empowered to commit children to the Glen Mills Schools. Says the act: "... the managers of (the Glen Mills Schools) shall receive under their care and guardianship, infants under the age of twenty-one years, committed to their custody by two judges, the president judge being one, of the Courts of Common Pleas (of the counties other than Philadelphia, Allegheny, Armstrong, Beaver, Butler, Cambria, Crawford, Erie, Fayette, Greene, Indiana, Jefferson, McKean, Somerset, Venango, Warren, Washington and Westmoreland) in which said infant resides or may be found, on complaint and due proof made to them by the parent, guardian or next friend of such infant, that such infant is unmanageable and beyond the control of the complainant and that the future welfare of said infant requires that such infant should be placed under the care and guardianship of the said managers of the (Glen Mills Schools) or when said complaint and due proof shall be made by the prosecuting officer of the county, that said infant is unmanageable, or a vagrant, and has no parent, or guardian, capable and willing to restrain, manage, and take proper care of such infant."

(5) Children over sixteen accused of crime are taken for trial into the regular criminal courts. (See Questions 23 to 25 above.)

In actual practice it has been found that outside of Philadelphia a large proportion of chil-

dren under sixteen are taken into criminal courts. A recent study of seven counties in Pennsylvania by the U. S. Children's Bureau (now in course of publication) showed that of 478 cases of children under sixteen given formal court hearings in one year, only 228 cases were in juvenile court. All but seven of the remaining 250 cases were taken into courts of aldermen, justices of the peace and police magistrates. Of 268 informal hearings only 149 were in juvenile court.

40. Q. If the Pennsylvania procedure in the handling of children under sixteen who break the law is not uniform, in the sense that one child may be subjected to criminal procedure while another who offends in the same way may become a ward in chancery "in need of the care and protection of the court," could not a *criminal* action against a child be attacked on the ground that it violated the fourteenth amendment of the Federal Constitution, which says that "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States: nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws?"

A. So far as is known, these criminal proceedings have not been attacked on these grounds. (See Mansfield's Case—par. 5 of Justice Porter's Decision.)

Mansfield's Case, 22 Super. Ct. 224.

41. Q. When a child over fourteen is certified for trial in the regular criminal courts or when a child is held for murder, does he have any special help in getting through the prosecution?

Sec. 1, Act of July 11, 1923, P. L. 994.

Manual, 353.

A. He may in Philadelphia County have some assistance. A special act provides that in that county a juvenile court probation officer may attend any session of the grand jury at which a male minor under the age of sixteen or any female minor is present. "Such probation officer shall be present during the entire examination of such minor by the grand jury, and may with the consent of the grand jury, assist in said examination."

This applies not only to child offenders but also to child witnesses.

The criminal courts for adults sometimes have probation officers who may be used for chil-

dren's cases and in some small courts the juvenile court probation officer may be called in to assist but in essence the child is under prosecution in the same manner that an adult is prosecuted. In adult probation work there is no theory of guardianship or protection and little practice of investigation or planning to solve the personal problems of the probationer. It is rather to maintain supervision to see that the probationer complies with the orders of the court.

42. Q. Why is it that no child offender under sixteen can be taken for a preliminary hearing into a magistrate's court in Philadelphia?

Secs. 9 and 13, Act of July 12, 1913, P. L. 711.

A. Because it is expressly prohibited by law.

Manual, 344.

43. Q. Do the Philadelphia magistrates have any kind of summary jurisdiction over child offenders?

A. It has recently been said on high authority that they do. The Crimes Survey Committee of the Law Association of Philadelphia in its report published in 1926 states (p. 345): "The magistrates still exercise jurisdiction over incorrigible children conferred on them by the Act of April 10, 1835, P. L. 133, (which provides for commitment to the Glen Mills Schools) . . . notwithstanding the exclusive jurisdiction of the Municipal Court over 'disorderly' children. This power would seem to be rightfully exercised." In re Shelton, 11 Pa. Dist. 155, is cited as authority. It makes no reference to the Act of March 3, 1903, which forbids the magistrate to commit children under the age of sixteen. (See Questions 8, 11 and 24.)

44. Q. May a magistrate use his discretion in discharging a child offender?

Opinion of Attorney General, 28 Pa. Co. 481.

Administration of the Juvenile Court, 17 Pa. Dist. 207.

A. " 'If a criminal offense be positively sworn to, the accused must be held for trial; it is not the province of the committing magistrate to decide on the credibility of the witnesses.' "

It is the practice for the magistrate to hear all the witnesses both of the prosecution and for the defense and to determine whether or not a case has been made out.

45. Q. Can a magistrate "discharge a child to a probation officer?"

Administration of the Juvenile Court, 17 Pa. Dist. 207.

A. No. "A probation officer, as an officer of the court, cannot exercise any control over or direction of a child discharged by the committing magistrate. The discharge is record evidence that the child is not an offender against the law and is not in need of probationary treatment. The court has no right to subject such discharged child to the supervision of a probation officer. The child placed on probation by the court is not discharged by the court, but is still amenable to the law and the probation may be terminated at any time by the court. A child discharged by the magistrate is absolutely free from the influence of the probation officer and from the control of the court."

46. Q. Were commitments of children by magistrates to correctional institutions regarded as legally sound, prior to the Act of March 26, 1903, which forbade them for children under sixteen?

Commonwealth, ex rel. Joseph v. M'Keagy, 1 Ashmead 248.

A. No. In an early case which arose in connection with a commitment by a magistrate to the House of Refuge, now the Glen Mills Schools, an eminent jurist said: "That the adjudication of a single magistrate of the grade of a justice of the peace, on a charge of vagrancy or crime, should be sufficient to take the child from its parent, and consign it to the control of any human being, no matter how elevated or how pure, for the full period of man or womanhood, and to authorize them, at their discretion, to apprentice the child to the most remote parts of the union, would not and ought not to be tolerated by freemen, in whatever condition their lot might be cast. In the first case brought before me, I without hesitancy, ruled, that in a commitment by an alderman or justice to the Refuge, the magistrate's adjudication was in no respect conclusive of the truth of its contents, and that the whole subject was open on the hearing of a writ of *habeas corpus;* when it was incumbent on the managers to show affirmatively and from evidence that the child detained in their custody was a proper subject for the Refuge, within the true intent and meaning of their charter. It is but mere justice to the respectable managers to say, that this doctrine, important as it was in its practical results on their institution, not only met their approbation, but that when it was started, they instructed their solicitor not to oppose, but to

acquiesce in it, and to govern his practice in these cases accordingly.''

47. Q. What dispositions of a child's case can now be made by a magistrate?

Administration of Juvenile Court, 17 Pa. Dist. 207.

A. Children under sixteen must on preliminary hearing either be dismissed or certified to the juvenile court or in the case of murder, to the Court of Oyer and Terminer. There is no provision in the law for a magistrate to keep a child on probation. A magistrate has no power to commit a child ''to any institution for the purpose of correction or reformation, but all applications for such commitment shall be made to the Court of Quarter Sessions of the county.''

Sec. 1, Act of March 26, 1903, P. L. 66.

Manual, 377.

In the cases of child offenders over sixteen, the magistrates exercise ordinary criminal jurisdiction if the case is one of violation of law. This includes the preliminary hearing for serious offenses and summary jurisdiction in petty offenses. The magistrates also have jurisdiction to commit children over sixteen for incorrigibility to the Glen Mills Schools and the Pennsylvania Training School. (See Question 25.)

48. Q. Does the concentration of all of the children's cases in one court in a community the size of Philadelphia result in delays in hearing the children's cases and in extended periods of detention?

Sec. 9, Act of July 12, 1913, P. L. 711.

Manual, 345.

A. The law abolishing preliminary hearings before the magistrates evidently tried to provide against such congestion. It specified: ''Such children shall be brought immediately before the judges of the juvenile court, and he shall hear and determine said cases, separately from each other at such place and at such hours of the day or night as will in the judgment of the president judge and the judge of the juvenile court be most conducive to the welfare of such children.''

It has not, however, worked out in practice that the child is promptly brought immediately before the judge. The arrangement now in use for arrested children and those complained of, is described in the report of the Court for 1925: ''Children arrested in any part of the city are brought to the House of Detention where they are examined by an assistant district attorney, the medical director, and the psychia-

Twelfth Annual Report of the Municipal Court of Philadelphia, pp. 13 and 11.

trist of the court. At these preliminary examinations a representative of the probation department, police officer, prosecutor, witnesses, parents, and the child may be present. If the examination shows that it is for the best interests of the child to dismiss the case, this is done and the child is not brought into court.

"Any person who reports to the probation department, a condition that, in his opinion, needs investigation, is encouraged to state the difficulty in an informal complaint, instead of filing a petition. If the case is not within the jurisdiction of this court, the complainant is, of course, directed to the proper outside agency. If the case appears to be within the jurisdiction of the court and can not be settled by the complaint clerk it is referred to a probation officer for investigation and if it is deemed for the best interests of the child to drop the case, this is done; if not, the complainant is referred to the court clerk to file a petition. It frequently happens, however, that the probation officer can, by personal conference, bring about a better understanding between the complainant and parents and child or make some social adjustment which will relieve the situation. If, however, the complainant insists upon filing a petition at once the case is listed for hearing far enough ahead to permit the probation department to make a preliminary investigation."

"During the year 1925, there were . . . 130 sessions of preliminary examinations.

"Preliminary examinations held at the House of Detention in arrest cases were held three days a week and numbered 4,832 during the year."

The method of sorting out the trivial cases which involve no grave issues of custody from those which need careful investigation and judicial disposal is one of the more serious administrative problems in the operation of a juvenile court.

49. Q. Is there any way at present by which without further legislation, preliminary hearings before magistrates could be abolished throughout the State?

A. Yes. Article V, Section 9, of the constitution of Pennsylvania provides that the Common Pleas Court judges who are also judges of the Quarter Sessions Courts, are to be justices of

the peace "as to criminal matters." This probably covers the case, even though the juvenile is not a criminal court. It would hardly be held that such a phrase limits the Judge's power as a justice of the peace in such way as to force the preliminary hearing of cases of child offenders into a criminal court.

Sec. 1, Act of May 23, 1923, P. L. 898, amending Sec. 1, Act of March 19, 1915, P. L. 5, which supplemented Act of May 5, 1911, P. L. 198.

In the case of Allegheny County the acts creating and defining the jurisdiction of the Allegheny County Court specified that the Judges thereof are to be *ex officio* justices of the peace.

It would seem that all of these judges outside of Philadelphia could hold preliminary hearings in these cases. It is only necessary that communities and judiciary organize so that police officials will deliver children into their hands rather than turn them over to magistrates and justices of the peace. As long, however, as the latter possess this power it is probable that in at least some communities it will be used. It is being used extensively in many communities at present. If the juvenile court system is to be insured for all communities in the State it is necessary to provide against taking the children elsewhere.

50. Q. Was it the intention when the Juvenile Court Act was passed to create an entirely separate machinery for the treatment of child offenders?

Preamble, Act of April 23, 1903, P. L. 274.

Manual, 338.

A. Such would seem to have been the general intention. The preamble of the Juvenile Court Act states that "WHEREAS, The welfare of the State demands that children should be guarded from association and contact with crime and criminals, and the ordinary process of the criminal law does not provide such treatment and care and moral encouragement as are essential to all children in the formative period of life, but endangers the whole future of the child . . . and WHEREAS, . . . it is important that the powers of the courts in respect to the care, treatment and control over . . . delinquent and incorrigible children should be clearly distinguished from the powers exercised in the administration of the criminal law" the juvenile court was created.

51. Q. What other evidence is there that it was the intention of the Juvenile Court Act of 1903 to

create entirely separate machinery for handling child offenders?

Sec. 7, Act of April 23, 1903, P. L. 274.

Manual, 355.

A. That act specifies that "no child pending a hearing under the provisions of this act, shall be held in confinement in any county or other jail, police station, or in any institution to which adult convicts are sentenced."

52. Q. How has this provision been interpreted?

A. Where children are given preliminary hearings in magistrates' courts this provision regarding their detention is interpreted to apply only to those children who are certified to the juvenile court and thus come under its jurisdiction. Children are held in police stations and lock-ups pending that step.

With the abolition of preliminary hearings in magistrates' courts in Philadelphia County this problem has been solved so that no child offender under the age of sixteen is detained in any police station, jail or lock-up but is taken immediately when detention is necessary to the House of Detention maintained especially for children.

It was found in the study of the seven Pennsylvania counties above referred to (Question 39) that many children are being held in jails, police station houses and borough lock-ups throughout the State.

Very recently the question of hearings in magistrate's court of children under sixteen has arisen in Pittsburgh, where children are held in police station houses. It is now being urged that they be taken for detention and hearing immediately on arrest to the juvenile court.

53. Q. In what way does the standard Juvenile Court Act provide for a waiver of jurisdiction by the juvenile court in the cases of child offenders?

A Standard Juvenile Court Law published by the National Probation Association, Inc., 1926, p. 13.

A. If it appears to the court that a child "has committed an offense which under the statutes would amount to a felony in the case of an adult, and the child is sixteen years of age or older, the judge, after full investigation, and if he shall deem it to be for the best interests of the child and the State, may waive jurisdiction whereupon such child shall be tried in the court which would have jurisdiction of such offense if committed by an adult; provided, that

such court may exercise the powers conferred upon the juvenile court in this act in conducting and disposing of such case."

54. Q. Can a parent "commit" his child to an institution for delinquent or incorrigible children?

Commonwealth, ex rel. Joseph v. M'Keagy, 1 Ashmed, 248.

A. No. This point was raised in an early case and discussed as follows: "The positions taken by Mr. Meredeth are, that Abraham Joseph, the father of this relator, is by law entitled to the custody of her person; that he may transfer the exercise of his parental authority to a third person; that he has done so in this instance to the managers of the Refuge, who stand therefore in *loco parentis,* and that it is not in the power of the father now, to rescind his grant.

"The first thing that strikes the mind in testing the soundness of these principles as applicable to the Refuge, is that their recognition will give rise to a class of commitments in which no public authority is invoked, and which depends on private arrangement, between parents, friends or guardians, and the managers. Although I frankly admit, that it would be difficult to find any body of men in this community in whom such authority could be more safely reposed, yet, for one, I would never consent to its being imparted to any human being. No child ought to be placed under the restraints, and in the association of such an establishment, without the intervention of some independent tribunal, standing indifferent between the accuser, the accused, and the managers, and even such a tribunal should act under precise and defined powers. I have no disposition to indulge in speculations, as to what might follow, if the argument pressed on me were sound. The possible consequences must strike the most casual observer, and the most superficial thinker.

"If, as I believe, the managers of the Refuge have no power to receive such a transfer of authority from the parent, guardian or next friend of a minor, then the questions as to how far parental authority extends, and what is the point at which the Commonwealth as *parens patriae* will interpose her superintending authority over both parent and child, are rather curious than useful in the decision of the case."

55. Q. How are proceedings in behalf of a child offender initiated in the juvenile court?

Sec. 2, Act of June 28, 1923, P. L. 898, amending Sec. 2, Act of April 23, 1903, P. L. 274.

A. The law mentions three ways:

(1) By petition filed by any citizen, resident of the county that the child is delinquent and is in need of the care and protection of the court.

(2) By commitment of a magistrate or justice of the peace in the case of all indictable offenses except murder and all violations of law and ordinances.

Sec. 1438, Act of May 18, 1911, P. L. 309 (The School Code).

Manual, 341.

(3) The board of school directors may through its superintendent, supervising principal, secretary or attendance officer "proceed against" an unruly or truant child before the juvenile court "or otherwise, as is now or may hereafter be provided by law for incorrigible, truant, insubordinate or delinquent children."

Sec. 2 of the Juvenile Court Act as now amended does not specify definitely the form of procedure a parent must take to bring his child to court on a charge of incorrigibility. The definition of delinquency (see Question 10) implies that the parent (who, it would seem, must be a citizen, resident of the county) may file a petition alleging his child delinquent.

56. Q. When does the jurisdiction of the juvenile court attach to a child?

Sec. 2, Act of June 28, 1923, P L. 898, amending Sec. 2, Act of April 23, 1903, P. L. 274.

Manual, 30.

A. Immediately upon the filing of a petition or the commitment by the magistrate or justice of the peace.

57. Q. What is the next step in the procedure?

Sec. 2, Act of June 28, 1923, P. L. 898, amending Sec. 2, Act of April 23, 1903, P. L. 274.

Manual, 340.

A. The law now states that "it shall be the duty of the judge, holding said juvenile court, to make all necessary order for compelling the production of such child, and the attendance of the parents and all persons having the custody and control of the child, or with whom the child may be."

58. Q. Must there be a preliminary investigation before the hearing?

Administration of the Juvenile Court, 17 Pa. Dist. 207.

A. It is not required by statute. If that is done it must be on the initiative of the judge. (See Question 48.)

59. Q. What are the requirements of the law regarding hearings?

Sec. 1, Act of June 28, 1923, P. L. 893, amending Sec. 1, Act of April 23, 1903, P. L. 274.

Manual, 339.

A. "All sessions of such juvenile court shall be held separate and apart from any session of the court [of Quarter Sessions] held for the purpose of its general criminal or other business, and the records of the proceedings of such juvenile court shall be kept in a docket, separate from all other proceedings of said court." There seems to be no requirement that the case of each child shall be heard separate and apart from other children's cases, though that is the usual practice in some of the courts, except in the case of gangs of boys, all of whom may be involved in the same offense. In that event they sometimes appear as a group and have one hearing.

60. Q. What kind of rules apply to the procedure in the case of a child alleged to have committed an offense?

A. None of the common law or statutory requirements for trial and prosecution of criminal offenses apply. The procedure is purely statutory and governed entirely by the provisions of the Juvenile Court Act, as amended.

Commonwealth v. Fisher, 213 Pa. 48.

". . . the proceeding is not one according to the course of the common law in which the right of trial by jury is guaranteed, but a mere statutory proceeding for the accomplishment of the protection of the helpless, which object was accomplished before the constitution without the enjoyment of a jury trial. There is no restraint upon the natural liberty of children contemplated by such a law,—none whatever; but rather the placing of them under the natural restraint, so far as practicable, that should be, but is not, exercised by parental authority. It is the mere conferring upon them that protection to which, under the circumstances, they are entitled as a matter of right . . . The design is not punishment, nor the restraint imprisonment, any more than is the wholesome restraint which a parent exercises over his child."

In actual practice in some juvenile courts in Pennsylvania there are often serious departures from this theory of the procedure. The spirit is one of prosecuting the child and of meting out punishment. (See Questions 90 to 92.)

61. Q. In making disposition of the case of children brought before him what consideration is to guide the judge?

Sec. 1, Act of June 15, 1911, amending Sec. 4, Act of April 23, 1903, P. L. 274.

Manual, 378.

A. "At the hearing, the judge or judges . . . shall determine, after an inquiry into the facts, what order for the commitment and custody and care of the child, the child's own good and the best interest of the State may require."

62. Q. What dispositions may a juvenile court Judge make of children's cases?

Sec. 1, Act of June 12, 1919, P. L. 445, amending Sec. 6, Act of April 23, 1903, P. L. 274.

Sec. 1, Act of June 15, 1911, P. L. 959, amending Sec. 4, Act of April 23, 1903, P. L. 274.

Manual, 378, 379.

A. It is specified in the statutes that he may:

(1) Dismiss the case,

(2) Place the child on probation to an officer of the court,

(3) Commit the child to the care of its parents, subject to the supervision of a probation officer,

(4) Commit it to some suitable institution or association willing to take it,

(5) Commit it to "the care of some reputable citizen of good moral character,"

(6) Commit it to the probation officer for placement,

(7) Commit it to some training or industrial school,

(8) Continue the hearing from time to time.

63. Q. May the judge order the administration of corporal punishment?

A. The statutes which enumerate his powers make no reference to his making any orders in the nature of punishment. It is rather with questions of custody that the court is empowered to deal.

64. Q. Under what circumstances can the supervision of the probation officer be exercised?

Sec. 1, Act of June 12, 1919, P. L. 445, amending Sec. 6, Act of April 23, 1903, P. L. 274.

Manual, 379.

A. The court "may commit the child to the care and guardianship of a probation officer duly appointed by the court and may allow said child to remain in its home, subject to the visitation of the probation officer, such child to report to the probation officer as often as may be required, and subject to be returned to the court for further proceedings whenever such action may appear to be necessary." The court may commit the child to the care and guardianship of the probation officer for:

(1) Free placement in a family home un-

der continuous supervision by the probation officer;

(2) Placement at board in some suitable family home in case provision is made by voluntary contribution or otherwise for the payment of its board;

(3) Placement at board in some suitable family home with an order on the county for the child's board "until a suitable provision may be made for the child in a home without such payment."

65. Q. Does the law further direct the procedure in the commitment of children?

A. Yes. The law directs the judge to take into consideration several other matters.

Sec. 9, Act of April 23, 1903, P. L. 274.

Manual, 380.

(1) "In all cases where it can properly be done, the child shall be placed in an approved family home, and become a member of the family by legal adoption or otherwise."

Sec. 10, Act of April 23, 1903, P. L. 274.

Manual, 381.

(2) No child under the age of twelve is to be committed to any institution of correction or reformation "unless, after the care and oversight given such child under the probation system . . . the court finds that the best interests of the child and the welfare of the community require such commitment."

Sec. 10, Act of April 23, 1903, P. L. 274.

Manual, 381.

(3) Delinquent and dependent children are not to be committed to the same institution.

Sec. 9, Act of April 23, 1903, P. L. 274.

Manual, 380.

(4) When committed for care away from their families, children are so far as possible to be placed in the care and custody of persons having the same religious belief as the parents of the child, or with some association, which is controlled by persons of such religious belief.

66. Q. What circumstances have courts held sufficient to justify the commitment of children to persons of other religious beliefs than those of the parents?

Commonwealth v. McClelland, 70 Super. Ct. 273.

A. The preference of children aged twelve and thirteen years, has been taken as a modifying factor justifying commitment to a custodian of a religious faith different from the religious rule into which they had been baptised as infants.

In this case the lower court gave the opinion, later confirmed by the Superior Court:

"The words 'so far as possible' imply because of their insertion in the act, that in some cases, owing to the circumstances, there may be such difficulties and peculiar situations, that to place the children as the act in the main directs, would be unreasonable, and not a benefit to them, which, after all, is the object of all juvenile court laws. These words imply that there is some discretion to be exercised by the court in placing children. If the act is intended to be mandatory in all instances, these words would have been omitted; on the other hand, the clear implication from the language is that so far as is reasonably possible the suggestions of the act as to the religious custody of children shall be obeyed."

67. Q. In the adjudication of cases of disputed custody between the father and the mother of a child is any consideration given to religious affiliations?

Act of June 26, 1895, P. L. 316.

Manual, 44.

A. No. The act provides that "the judges of the courts shall decide, in their sound discretion, as to which parent, if either, the custody of such minor child shall be committed, and shall remand such child accordingly, regard first being had to the fitness of such parent and the best interest and permanent welfare of the said child."

Commonwealth ex rel. Elizabeth Kelley, appellant, v. Michael J. Kelley, 83 Super. Ct. 17.

The fact of a child's baptism or of the parent's adherence to a particular faith is not a determining factor in regard to the choice of a custodian under this act.

Commonwealth ex rel. Weber v. Miller, appellant, 84 Super. Ct. 409.

Cases of children whose parents are in dispute on their custody are not within the jurisdiction of the juvenile court.

68. Q. Are there any provisions in the juvenile court laws which specify how the placement of children in private families by probation officers is to be carried on? (See Question 64.)

A. Only very vague requirements. The finding of foster homes and the supervision of children placed in them is a difficult form of child welfare in which abuses promptly appear if scrupulous care is not persistently exercised. It is not now thought safe to have it carried on by persons with other pressing duties or in such a way

Minimum Standard for Child Welfare, U. S. Children's Bureau Publication, No. 62, p. 72.

that one person alone decides on the suitability of the home and supervises the child placed in it.

69. Q. Are the child placement activities of juvenile courts and probation officers subject to state inspection and supervision as are other children's institutions and agencies and persons engaging in placement?

A. This is an uncertain point. The Administrative Code which confers the powers of inspection and supervision on the State Department of Welfare defines "Children's Institutions" so that it seems to exempt probation officers as persons performing this duty, though it may include,

(a) Courts as public agencies or

(b) Persons who take the children to board.

This paragraph seems to define three classes of agencies and persons as subject to inspection:

Sec. 2002, Act of June 7, 1923, P. L. 498.

(1) "Any incorporated or unincorporated organization, society, corporation or agency, public or private, which may receive or care for children or place them in foster family homes, either at board, wages, or free." This might be construed to cover a probation department of a court.

(2) "Any individual who for hire, gain or reward receives for care a child, unless he is related to such child by blood or marriage within the second degree."

This might be construed to cover any person who takes a juvenile court ward to board.

(3) "Any individual not in the regular employ of the court or of an organization, society, association or agency, duly certified by the department, who in any manner becomes a party to the placing of children in foster homes, unless he is related to such children by blood or marriage within the second degree, or is the duly appointed guardian thereof." This section specifically exempts the probation officer who may be engaged in placement activities, as subject to State inspection.

70. Q. Can a Pennsylvania court commit a child to an institution outside of the Commonwealth?

St. Mary's Industrial School v. County, 53 P. L. J. 44, 46.

Act of June 7, 1911, P. L. 676.

A. This is a doubtful point. In 1910 it was held that where a child was committed to an institution outside the State, and the county had made no agreement to pay for its care, the county could not be held liable for such expenses. The following year a statute was enacted which provided that where a juvenile court made such a commitment the county would be liable for the child's maintenance when the institution presented its bills in proper form. This certainly implied that the court had such powers and that it represented good policy to exercise them.

Commonwealth ex rel. Josephine Lemheck v. Lembeck, appellant, 83 Super. Ct. 305.

This view is, however, directly opposed to the theory advanced in 1924 by the Superior Court which held: "It may be stated as a general proposition that no State can exercise jurisdiction by judicial process or otherwise over persons or property outside of its territorial limits. . . . Little discussion is necessary to show that the institution to which this child was committed is not subject to the jurisdiction of the court making the order. It is not bound to comply with the order, nor if it undertake so to do is it subject to the control or direction of the court with reference to the manner in which the appointment shall be exercised. The authority of every tribunal is restricted by the territorial limits of the State in which it is established and any attempt to exercise authority outside of those limits must be regarded as an illegal assumption of power: Pennoyer v. Neff, 95 U. S. 714. The child in this instance is in a sense a ward of the court; she is within the State of Pennsylvania; she is entitled to the protection which the laws of this State give her, and while the order was doubtless made wholly in the interest of the child and with regard to her welfare, the action of the court, placing her under the jurisdiction and subject to the laws of another State and in the control of an institution not responsible to the court making the order or the laws of this Commonwealth, cannot be sustained. As no tribunal established by this State can extend its process beyond its own territory so as to subject persons to its decisions, the result of the order complained of is to place the child in an institution over whose management the committing court has no control, and to remit the contending parents to a foreign jurisdiction for the determination of a question lawfully submitted to a court of com-

petent jurisdiction. We are constrained therefore to reverse the decree of the court."

71. Q. Is a child committed to a reformatory institution thereafter under the guardianship of the institution or of the court?

A. This is an uncertain point. Some parts of the law seem to imply that with the commitment, the court delegates certain powers over the child to the institution. The laws authorizing the Glen Mills Schools and the Pennsylvania training School to receive delinquent children, give these institutions and agencies powers of control and supervision over the children to the age of twenty-one. In the earlier years these laws were strictly construed to that effect.

Sec. 6, Act of March 23, 1826, P. L. 133; Sec. 15, Act of April 22, 1850, P. L. 538.

Manual, 444, 428.

Davenport v. The Managers of the House of Refuge, 11 Phila. 458.

Such might be implied by the act which specifies that "in all cases in which a delinquent child shall be committed to the care of a reformatory institution, when such child shall be discharged from such institution the court shall be duly advised thereof, and a record of such discharge shall be kept in the juvenile court docket."

Sec. 1, Act of June 15, 1911, P. L. 959, amending Sec. 4, Act of April 23, 1903, P. L. 274.

Manual, 378.

This section has been construed, however, by the juvenile court to mean that the exact time of discharge is to be reported, so that the financial obligations to the institution may be kept clear and that this section does not confer the power of absolute discharge.

Juvenile Court No. 7943, 21 Pa. Dist. 535.

Originally Sec. 8 of the Juvenile Court Act itself read: "No order for the commitment of any child in any proceedings had under this act, shall extend to a period beyond when such child shall attain the age of twenty-one years." In 1909 this was amended to read: "All orders which may hereafter be made . . . respecting the commitment to institutions, or other judicial disposal, of minors, under the age of sixteen years, by virtue of the several provisions of this act or any of them, shall be subject to amendment, change or extension by the judges . . . up to the time when such minors shall have attained the age of twenty-one years." Since this act does not, however, contain any repealing clause either specific or general, it may be argued that in the case of the two institutions named, their powers of guardianship remain unimpaired.

Sec. 1, Act of April 22, 1909, P. L. 119.

Manual, 383.

This view seems to be partially sustained by an opinion in 1912 of the Court of Quarter Ses-

Juvenile Court No. 7943, 21 Pa. Dist. 535.

sions of Philadelphia County: "It was always required to have the child adjudged 'a fit subject for the guardianship of the said managers.' There was provision that if a judge should be of the opinion that a 'case had not been made out' he should order the infant to be forthwith discharged, which order should be obeyed by the board of managers under the pains and penalties provided by law against unlawful imprisonment; but, as was held in Davenport v. House of Refuge, 11 Phila. 458 (1876), when the commitment is properly made and reviewed and approved by one of the Judges of the court, there is no discretionary power to discharge the minor on *habeas corpus* because he arrives at the statutory age for such discharge."

72. Q. Can the Glen Mills Schools refuse to admit a child sent to them on a court commitment?

Juvenile Court No. 7943, 21 Pa. Dist. 535.

A. It was said by the Court of Quarter Sessions of Philadelphia County in 1912: "The court recognized the right of the management of the Glen Mills Schools to exercise a discretion as to the reception of children, who have been duly convicted of crimes and misdemeanors, but the children committed by the juvenile court were not convicted of crimes and misdemeanors, but were delinquents or incorrigibles, whose status was fixed by the provisions of the Act of April 23, 1903, P. L. 274, and its supplements. Such children, when adjudged, after a proper hearing, as delinquents or incorrigibles, become wards of the court subject to its jurisdictional care until they become twenty-one years of age, unless previously discharged by the court in due process of the law. The court deemed it important to have it determined whether there was or was not a right upon the part of the Glen Mills Schools to decline a commitment regularly made by the court. A commitment is a command to the person or institution to which it is directed to keep the person named in the commitment until he or she shall be discharged by due course of law."

It has worked out practically that these institutions are forced to adopt rules and regulations regarding the conditions under which they will accept a child from the courts. They seek cooperation of the courts in following these rules.

73. Q. In what way can the managers of the Glen Mills Schools and the Pennsylvania Training School exercise their own judgment in the release of a child?

A. They may parole on their own discretion and may return a child to the institution for breach of parole.

Juvenile Court No. 7943, 21 Pa. Dist. 535.

With regard to discharge, it was decided in conference in 1912 between the juvenile court judge of Philadelphia County and the solicitor for the schools that "If at any time the superintendents of the Glen Mills Schools, acting for the board of managers, deem it proper to discharge a child absolutely, a report of the satisfactory behavior of the boy or girl and of his or her eligibility for discharge may be made to the court, and, unless cause is shown to the contrary, the court will direct the absolute discharge of such child."

74. Q. Can a juvenile court commit a boy over fifteen years of age to Huntingdon Reformatory?

In re Huntingdon Reformatory, 29 Pa. Dist. 186.

A. No.

75. Q. In ordering that a delinquent or incorrigible child shall receive care away from its family, upon what financial resources can a judge call?

A. In general the acts contemplate three possible sources of support; of these two are subject to judicial order—parents and counties.

Sec. 1, Act of June 12, 1919, P. L. 445, amending Sec. 6, Act of April 23, 1903, P. L. 274.

Manual, 379.

"In any case of the commitment of . . . (an) incorrigible or delinquent child . . . the court committing such child may order and direct that the board and clothing of, and necessary medical and surgical attendance upon, and the care of, such child, and its maintenance generally, and the necessary expenses of placing or replacing such child, shall be paid by the proper county, and may fix the amount which shall be paid for such board and clothing."

Sec. 1, Act of June 15, 1911, P. L. 959, amending Sec. 4, Act of April 23, 1903, P. L. 274.

Manual, 378.

It "shall be within the power of the court to make an order upon the parent or parents of any such child to contribute to the support of the child such sum as the court may determine."

Sec. 3, Act of June 7, 1907, P. L. 433.

Manual, 390.

"When the court . . . makes such disposition of a child as requires its transportation to a point outside of the county, the necessary expenses of its removal, and those of the proba-

tion officer in charge, shall be certified . . . to the judge presiding, who shall . . . direct by whom it shall be paid."

There have been left in the Act of June 12, 1919, two provisos from earlier acts which seem to qualify procedure in some instances:

Sec. 1, Act of June 12, 1919, P. L. 445, amending Sec. 6, Act of April 23, 1903, P. L. 274.

Manual, 379.

(1) The court "may authorize the probation officer to board out the said child in some suitable family home, in case provision is made by voluntary contributions or otherwise for the payment of the board of such child."

(2) The court "may direct that the payment of the board of such child be made by the proper county, until a suitable provision may be made for the child in a home without such payment."

Sec. 1, Act of June 15, 1911, P. L. 959, amending Sec. 4, Act of April 23, 1903, P. L. 274.

Manual, 378.

The third possibility of support for the child is the "association willing to receive it." (See Question 62.)

76. Q. If a child is sent to the Glen Mills Schools or the Pennsylvania Training School, how is its maintenance provided?

Act of March 27, 1903, P. L. 83.

Manual, 397.

House of Refuge v. Luzerne Co., 215 Pa. 429.

A. In the case of the Glen Mills Schools, which were regarded as "charities" at the time of their inception, one half of the per capita expense is borne through a State appropriation made to the institution and the other half by the county, paid by the county commissioners directly to the institution. If the child's family is financially able, the court may require it to reimburse the county.

Sec. 1, Act of April 11, 1868, P. L. 847, No. 786.

Manual, 437.

The County of Forest v. The House of Refuge of Western Pennsylvania, 62 Pa. 441.

In the case of the Pennsylvania Training School at Morganza, the county of the child's parents' residence is chargeable with its maintenance at the school. If there are no parents living or resident in the State, the county "wherein the person committed may have last resided for a period not less than ninety consecutive days" is liable. This latter provision does not apply to children who are sent from eleemosynary institutions. In such cases their residence prior to their "having become inmates of such institutions," is taken as their domicile.

77. Q. If a child is committed to a private disciplinary or correctional institution, how is its maintenance provided?

Act of April 15, 1903, P. L. 208.

Manual, 396.

A. Such private institutions may assume the support of the child or an order may be made on the county with three provisos:

(1) That the parents or guardian is not of sufficient ability to pay the expense of maintaining and instructing such child;

(2) That the order shall not exceed the actual cost of maintaining and instructing such child;

(3) That this amount is not in excess of the per capita cost at the houses of refuge (Glen Mills and Morganza).

78. Q. When the parent is able to pay for the child's maintenance in such institutions, does he deal directly with the institution?

A. No. He usually deals with the court which orders the county to pay the institution and the parent to reimburse the county. In that way the county underwrites the cost of the child's board so that the institution will not lose if the parent fails to pay.

This practice tends to convert what are really cases involving only question of custody into cases of seeming dependency.

79. Q. If a delinquent or incorrigible child is committed to an institution outside of the Commonwealth, is the public in any way responsible for its support?

Act of June 7, 1911, P. L. 676.

Manual, 398.

A. Yes. The fact of court commitment, even if no order is made, gives these institutions according to the Act of 1911, a claim for reimbursement on the county if that claim is presented in the proper form. Neither an order nor an approval of the bills by the judge is necessary apparently to validate these claims. (See Question 70.)

80. Q. Has the nature and form of possible appeals from the juvenile court to the Superior Court been discussed in a judicial opinion? (See Questions 19 and 20.)

Commonwealth v. Nellie Showalter Mountain, 82 Super. Ct. 523.

A. Yes, as follows in a case involving alleged neglect of a parent:

"The testimony taken at the hearing was not made a matter of record nor reduced to writing. We have nothing therefore but the order of the court for consideration. We would lend an at-

tentive ear to the complaint of this mother from whose custody and care her children had been taken if the testimony on which the action of the court was based had been brought up as a part of the record. The right of the mother to the care and comfort of her little children is one of the highest recognized by the law and the proceeding should be subject to review which not only takes such children from their home and kindred, but removes them to a distant place where they are in charge of an institution invested with authority to place them in private homes and to give legal consent to their adoption as members of the families of strangers. But provision is not made in the Act of 1903 for an appeal of such a case to be heard on its merits. This apparent oversight was corrected by the Act of June 1, 1915, which provides in the first section that within twenty-one days after the final order or decree of any of the courts of the Commonwealth sitting as a juvenile court or any judge sitting as such, committing or placing any dependent, neglected, incorrigible, delinquent, or other kind of children, or child, to any institution, etc., such child or children shall, as a matter of right by its or their parent or parents or next friend, have the right to present, to such courts sitting as juvenile courts or judge sitting as such, a petition to have its or their case or cases reviewed and reheard, if in the estimation of such parent or parents or next friend an error of fact or of law or of both has been made in such proceedings or final orders; or if the said error has been improvidently or inadvertently made, on which petition it is made the duty of the court to grant a rehearing as a matter of right. The statute also directs that the testimony be taken at such rehearing and transcribed by the court stenographer which testimony is to be made a part of the record in the case, and from the order of the court made at the rehearing an appeal to the Superior Court is allowed as a matter of right; the case to be heard as in the case of an appeal from any definitive sentence or decree of the Orphans Court, and in hearing such appeal it is made the duty of the Superior Court to consider the testimony as part of the record. If the case were presented on an appeal after a rehearing, all of the questions of law and fact arising would be before us and the propriety of the action of the court would be

for consideration. But the pending appeal is from the original order of commitment with respect to which we have no power of review except that which is given by statute, and as the evidence is not before us, we are left only to a consideration of the regularity of the record, the jurisdiction of the court in such cases being unquestioned. The time has elapsed within which a petition for a rehearing might be presented under the Act of 1915. The second section of that statute provides for an application to the juvenile court for a revocation or modification of the order of commitment if such a change of circumstances should take place as in the estimation of the parent or next friend of such child or children should warrant such revocation or modification; on which application it is made the duty of the court to give a full and proper hearing on the petition. The statute also directs that the testimony at such hearing be taken and transcribed by a court stenographer and such testimony is made a part of the record of the case and from the decree of the court in such hearing an appeal is allowed as a matter of right to the Superior Court. The provisions of the Act of 1915 are the only regulations for appeals to review the proceedings on their merits to which our attention has been called. As the present appeal is not within the intendment of this statute, we are without authority to enter into a consideration of the facts involved. . . .

"No reference was made by the counsel on either side in the argument to the Act of April 18, 1919, P. L. 72, relating to the consideration on appeal by the Supreme and Superior Courts of testimony taken in any proceedings in courts of record and providing for the making of such testimony a part of the record. We have not considered the question whether this statute so amends the Acts of April 23, 1903, and June 1, 1915, above cited, as to give to the party aggrieved an appeal from an original order entered under the former statute with a right to a review of the case on its merits; the testimony taken becoming a part of the record. If it be contended that the later statute entitles the appellant to such relief, we are confronted by the fact that the testimony presented to the court was not 'filed in said proceedings' and made a part of the record to be reviewed in this court as required by the statute; nor so far as we

may gather from the argument was any movement made to have the testimony reduced to writing and brought up for review. As the assignment of error only attacks the order of the court, we have therefore nothing before us except the regularity of the proceeding."

81. Q. What are the provisions of the Act of April 18, 1919, P. L. 72, referred to above?

Act of April 18, 1919, P. L. 72.

A. "In any proceedings heretofore or hereafter had in any court of record of this Commonwealth where the testimony has been or shall be taken by witnesses, depositions, or otherwise, and where an appeal has been or shall hereafter be taken from the order, sentence, decree, or judgment, entered in said proceedings, to the Superior or Supreme Court, such testimony shall be filed in said proceedings, and the effect of said appeal shall be to remove, for the consideration of the appellate court, the testimony taken in the court from which the appeal is taken, and the same shall be reviewed by the appellate court as a part of the record, with like effect as upon an appeal from a judgment entered upon the verdict of a jury in an action of law, and the appeal so taken shall not have the effect only of a certiorari to review the regularity of the proceedings in the court below."

82. Q. How can a review of the disposition of a child's case by the juvenile court be secured other than by appeal to the Superior Court? (See Question 19.)

Sec. 1, Act of April 22, 1909, P. L. 119, amending Sec. 8, Act of April 23, 1903, P. L. 274.

Manual, 383.

A. "All orders . . . shall be subject to amendment, change or extension by the judges thereof sitting in juvenile court, upon motion of the district attorney or chief probation officer, or upon petition of any other person or persons in interest, after at least five (5) days written notice both to the district attorney and the chief probation officer . . . "

Sec. 1, Act of June 1, 1915, P. L. 652.

Manual, 384.

Within 21 days after the final order of commitment of a child for care away from its own family, such child or children shall as a matter of right, by its or their parent or parents or next friend, have the right to present to such courts sitting as juvenile courts or judge sitting as such, a petition to have its or their case or cases reviewed and reheard, if in the estimation of such parent, parents, or next friend,

an error of fact or of law, or of both, has been made in such proceedings or final orders, or if the said order has been improvidently or inadvertently made; and, upon the presentation of such petition, the said courts sitting as juvenile courts, or judge sitting as such, shall grant such review and rehearing as a matter of right; and it shall be required that the testimony be taken down at such reviews and rehearings and transcribed by an official court stenographer, at the cost of the party requesting such review and rehearing, which testimony shall be duly made a part of the record in such cases.

Sec. 2, Act of June 1, 1915, P. L. 652.

Manual, 385.

In the case of a child committed for care away from its family, a review may be secured *at any time* if a change in circumstances takes place that in the estimation of the parent or next friend warrants a modification or revocation of the commitment order. The review is secured on petition "and it shall be the duty of such courts . . . or judges . . . to give a full and proper hearing to such petitions; and it shall be required that the testimony at such hearings be taken and transcribed by an official court stenographer, at the cost of the party requesting such hearing, and such testimony shall be duly made a part of the record in the case."

In both of these cases appeals should be to the Superior Court.

83. Q. Is it necessary to have exhausted this recourse to a rehearing before an appeal can be made to the Superior Court?

A. It probably is because the law says that the appeal is from the "final" order or decree of the juvenile court and it could hardly be termed *final* if there had been no effort to secure a rehearing in the regular way provided by law. It is interesting to note, however, that in one of the cases appealed to the Superior Court since 1915 from the juvenile court, the only evidence sent to the higher court was the order of the judge. Perhaps the fact that the cost of recording and transcribing the testimony falls on the appellee accounted for this omission.

Commonwealth v Nellie Showalter Mountain, 82 Super. Ct. 523.

It is reported that cases have been appealed to the Superior Court from Philadelphia County which have not followed the rule of filing exceptions within twenty-one days and having a rehearing.

84. Q. In what way, if any, can a child be discharged from a correctional institution on a writ of *habeas corpus?*

The Commonwealth against Addicks and wife, 5 Binney, 519.

Act of Feb. 18, 1785, 2 Sm. L. 275.

Act of April 13, 1791, 3 Sm. L. 28.

Halderman's Petition, 276 Pa. 1 (1923).

A. Ordinarily a writ of *habeas corpus* is the process for ascertaining whether or not a person is being illegally held in restraint. It is usually taken out from the Common Pleas or Quarter Sessions Court of the county in which the person is detained and is a kind of immediate inquiry to find out whether in the opinion of this court the order of the lower court was in "due process of law." Under certain circumstances the Supreme Court will receive a writ of *habeas corpus.*

The use of *habeas corpus* proceedings in the case of juvenile court wards is a far more complicated question than in the other classes of cases in which it is largely used, *i. e.* (1) in criminal prosecutions where there are very specific rules governing the detention of persons, and (2) in cases of disputed custody of a child which are governed by a special statute which articulates a well established rule of chancery jurisdiction.

Commonwealth v. Briggs, 29 Pa. Dist. 727, 68 P. L. J. 141.

It was held by the Allegheny County Common Pleas Court in 1919 that the Act of June 1, 1915, P. L. 652, provides a statutory remedy for securing a rehearing and an appeal in juvenile court cases. Said the court: "The relator has a statutory remedy which must be pursued. The petition presented to the Juvenile Court is marked 'Filed,' but there is nothing indicating action taken by the court. The refusal, if there be a refusal, to entertain a petition for rehearing cannot be considered in a proceeding such as this."

U. S. ex rel. Yonick v. Briggs, 266 Fed. 434.

In 1920 this same case was taken to the U. S. District Court on several counts, all of which were dismissed. With regard to *habeas corpus,* the Federal Court held: "From this record we see that the minor is in custody by virtue of the order of a court of competent jurisdiction. He was never tried upon the charge of larceny, for which he was originally arrested. The subsequent steps taken before the juvenile court were to save him from this criminal trial. His present commitment is on the ground of delinquency, which in the act means any child, including incorrigible children, who may be charged with the violation of any law of the Commonwealth or the ordinance of any city,

borough, or township. In the case of Frank v. Mangum, 237 U. S. 309, 35 Sup. Ct. 582, 59 L. Ed. 969, the Supreme Court discusses very fully and with great clearness, the question of deprivation of liberty without due process of law, the meaning of the constitutional provision, and the proper mode of procedure, where the citizen claims his constitutional rights have been invaded. That case holds that under the terms of Section 753 of the Revised Statutes (Comp. St. Section 1281), in order to entitle the applieant to relief under the writ of *habeas corpus,* it must appear that he is held in eustody in violation of the Constitution of the United States; that he eannot have relief on *habeas corpus,* if he is held in custody by reason of conviction upon a criminal eharge before a court having jurisdiction over the subject-matter of the offense, the place where it was committed, and the person of the prisoner; that, if the proceedings in the eourts of a State are based on a law not repugnant to the Federal Constitution, and eonducted aeeording to the settled course of procedure under the law of the State, so long as it includes notice and a hearing, or an opportunity to be heard, before a court of competent jurisdiction, according to established modes of proeedure, this is 'due process of law' in the eonstitutional sense; and, finally, that *habeas corpus* will lie only where the judgment under which the party is detained is shown to be absolutely void for want of jurisdiction in the court, either because such jurisdiction was absent in the beginning, or was lost in the course of the proceedings."

85. Q. Are there special acts in addition to the *Habeas Corpus* Acts of 1785 and 1791 which apply to cases involving the custody of children?

Sec. 1, Act of July 11, 1917, P. L. 817.

A. Yes, there is special provision for appeals in actions involving the custody of children. The statute provides: "In all proceedings now pending or hereafter brought any party aggrieved by any order, decree or judgment in any *habeas corpus* proceeding, involving the custody of children in any of the courts of this Commonwealth, shall have the right to appeal therefrom to the Superior Court of this Commonwealth, who shall consider the testimony and make such order upon the merits of the case, either in affirmation, reversal or modification of

the order appealed from, as to right and justice shall belong.''

86. Q. How has this been interpreted by the courts?

Commonwealth v. Nellie Showalter Mountain, 82 Super. Ct. 523.

A. It has been so interpreted that an appeal from a simple order of a juvenile court relating to custody cannot be taken on the basis of this act. In a recent decision of the Superior Court it was stated: ''It is suggested by the learned counsel for the appellant that the Act of July 11, 1917, P. L. 817, confers authority to examine the case on its merits, but that act relates specifically to *habeas corpus* cases. The technical significance of the writ of *habeas corpus* is well understood and when the Legislature refers in terms to a writ of *habeas corpus* it must be understood that reference is had to the common law writ. The act referred to gives an appeal to the Superior Court from any order, decree or judgment in any *habeas corpus* proceeding involving the custody of children in any of the courts of the Commonwealth, and to consider the case on its merits as right and justice may demand. The proceeding under the Act of 1903 is not by writ of *habeas corpus* nor can it be properly described as a *habeas corpus* proceeding. True it is that it involves the question of the custody of certain minor children, but the case does not arise on a writ of *habeas corpus.*''

87. Q. Have there been decisions relating to the manner in which juvenile court cases are to be docketed?

Commonwealth v. Nellie Showalter Mountain, 82 Super. Ct. 523.

A. Yes. ''In disposing of the case it is proper to direct the attention of the counsel and officials concerned to the caption of the case. It is entitled as if it were a criminal case against Mrs. Mountain, whereas it is a statutory proceeding relating to the custody and welfare of certain minor children. The subject was considered in Commonwealth v. Carnes, 82 Pa. Superior Ct. 335, decided at Philadelphia in December last, and reference is now made to the suggestion of our Brother Gawthrop in that case with respect to the manner in which such proceedings should be docketed.''

Commonwealth v. Carnes, 82 Super. Ct. 335.

''In conclusion, we deem it our duty to refer to the caption of this case: Com. v. Clarence Carnes. While there is ample precedent for a caption in that form, such a proceeding is not

a criminal ease. The Aet of 1903 states that it is important that the powers of the eourts in respeet to the eare, treatment and eontrol over dependent, negleeted, delinquent and incorrigible ehildren should be clearly distinguishable from the powers exereised in the administration of the eriminal law. It provides that all sessions of the juvenile eourt shall be held separate and apart from any session of the eourt held for the purpose of its general, eriminal or other business, and that the reeords of sueh proeeedings shall be kept in a separate doeket. To that end, we think proeeedings in the juvenile eourt should be given a more appropriate eaption, one not in the form of a eriminal ease, sueh as in re: John Doe, and alleged delinquent ehild."

Two eases on whieh important deeisions were handed down do not mention the names or addresses of the ehildren who were involved. The eases are referred to as "Juvenile Court, No. 2725," 18 Pa. Dist. 79 and "Juvenile Court, No. 7943," 21 Pa. Dist. 535.

88. Q. Does a judge of the juvenile court write an opinion giving his reasons either in law or in social praetiee for a given disposition of a ehild's ease?

A. No.

89. Q. What is the result of this from the point of view of the growth of soeial institutions?

A. The possibilities of the aetual day by day praetiee of the juvenile eourt to eontribute to a growing fund of law and of good soeial praetiee will not be fully realized until deeisions in these eases or at least in the more important ones are earefully prepared and published. It also seems desirable that in eases where the law is not elear, there should be appeals to the higher eourts for authoritative deeisions. On the legal side it has been pointed out that the lawyer "will look in vain for reported eases arising under the juvenile eourt statutes on other than eonstitutional questions. "Yet the cases whieh arise and are disposed of under these statutes frequently involve fundamental legal prineiples, for questions of status are the most fundamental of all legal questions . . . By questions of status is meant those questions whieh pertain to

Edward Lindsey: The Juvenile Court Movement from a Lawyer's Standpoint, Annals of the American Academy of Political and Social Science, Vol. LII, p. 140.

the relations of individuals to each other and to social and political groups, such as the family, the State and society in general. All rights and obligations pertain to persons either by reason of the person's relation to some group—from the mere fact of his standing in that relation—or because of some contract or agreement between himself and some other person or group."

A beginning was made in Philadelphia by Judge Staake in the preparation of such materials but with the organization of the Municipal Court, he ceased to sit in juvenile court.

90. Q. Do any other officers of the machinery of criminal law have a part in the handling of cases of child offenders after they come under the jurisdiction of the juvenile court?

A. Yes, the district attorney, the sheriff and the clerk of Court of Quarter Sessions, each has a part in the procedure.

91. Q. What has the district attorney to do with this procedure?

A. He keeps a representative in juvenile court to look after the interests of the Commonwealth. While according to the general theory of the juvenile court there is no prosecution of the child, several of the acts mention the district attorney as a party at interest in the cases of children before the juvenile court. The district attorney may, for instance, move for a revision of the court's order. If the parent or next friend petitions for such revision, he must be notified. He has the duty placed upon him by statute of reporting to the Quarter Sessions judges, commitments of minors made by magistrates, and justices of the peace, so that the Quarter Sessions judges may exercise their powers of review and supervision.

Sec. 1, Act of April 22, 1909, P. L. 119, amending Sec. 8, Act of April 23, 1903, P. L. 274.

Manual, 383.

Sec. 4, Act of June 8, 1893, P. L. 393.

Manual, 502.

92. Q. What part does the sheriff play in the juvenile court procedure?

A. He may, on the request of the chief probation officer, assist in the service of writs and processes and in the execution of orders by the court. In order that the sheriff's fees may be properly paid, the probation officer must report all such requests as are made on the sheriff to the judge of the court.

Sec. 1, Act of June 7, 1907, P. L. 438; Act of April 9, 1915, P. L. 54.

Manual, 388.

93. Q. What part does the clerk of the Court of Quarter Sessions have in the procedure?

Sec. 1, Act of June 9, 1911, P. L. 836.

Manual, 387.

A. He serves as the clerk of the juvenile court for the recording of actual court procedure.

94. Q. Does he act as custodian of any social case records that may be kept?

A. No.

95. Q. What provision is made for that recording?

Sec. 1, Act of May 11, 1911, P. L. 268.

Manual, 350.

A. The judges of the various courts that sit as juvenile courts may "appoint such clerks, stenographers, and office assistants, in connection with the probation work of the juvenile court, as shall, in the opinion of the said judges, be necessary for the efficient conduct of the said work."

Sec. 2, Act of May 11, 1911, P. L. 268.

Manual, 351.

The judges may fix the salaries of these employes not to exceed $100 per month.

96. Q. How are the court costs involved in juvenile court cases assessed?

A. Several acts now extant relate specifically to this subject:

Act of June 9, 1911, P. L. 836.

Manual, 387.

(1) The juvenile court judge has the power when he makes disposition of a case to make an order disposing of the questions of payment of costs "including fees of magistrates, constables, clerks of the courts, sheriffs and witnesses; and may impose them on the county, or on the complainant, if, after hearing, it be found that the complaint was made without proper cause, or upon the parent or parents, or guardian, or custodian of the child, if, after hearing, it be found that they were at fault, and are of ability to pay." It is further provided that all orders for the payment of costs are immediately chargeable to the proper county. Witness fees are allowed only to such witnesses as are subpoenaed by the probation officer and attend or are certified by the court as "in attendance and necessary."

Act of June 7, 1907, P. L. 438; Act of April 9, 1915, P. L. 54; Act of April 6, 1925, P. L. 155.

Manual, 388, 389, 391.

(2) In the case of sheriffs' and constables' fees there are statutory provisions as to the amounts and as to occasions on which they will be paid. The judge may impose them on the county, the complainant,

"if, after hearing, it be found that the complaint was made without probable cause," or on the parent, guardian or custodian, if they are at fault and of ability to pay.

In the case of the removal of a child to a place outside the county, the judge may authorize the payment of necessary travel expense of the child and the probation officer in charge and shall "direct by whom it shall be paid."

Act of June 8, 1893, P. L. 399.

Manual, 499-503.

(3) Under the Act of June 8, 1893, the courts were empowered to commit delinquent and some other classes of "minors" to incorporated agencies for the protection of children from cruelty and for child placement.

Act of May 11, 1911, P. L. 270.

Manual, 393, 392.

A supplement was passed to this act which provided that when the judge who must visé the commitment made by a magistrate and either confirm it or release the minor, performs that service, he may place the cost of the proceeding on the county or on the complainant. If the magistrate who hears the case in the first instance discharges the minor, the county is chargeable with the costs.

## II. PROBATION AND PROBATION OFFICERS.

97. Q. What is the legal background of probation?

Flexner and Oppenheimer: The Legal Aspect of the Juvenile Court, U. S. Children's Bureau Publication, No. 99, p. 8.

A. Probation—one of the most important procedural features of the juvenile court, under which a child, instead of being committed to an institution, is kept under the surveillance of the court until it is safe to release him—is an evolution of the common-law method of conditionally suspending a sentence. Sir Walter Raleigh was executed under a sentence pronounced against him fifteen years before, after having been put at the head of a fleet and an army in the interim. Early American courts knew the device as 'binding to good behavior.' In juvenile court procedure the harsh connotation has been removed, but the root idea is the same."

Commonwealth v. Duane, 1 Binney 98.

These authorities cite a Pennsylvania Supreme Court case as illustrating this practice of binding to good behavior. In this Justice Tilghman said: "Surety for good behavior

may be considered in two points of view. It is either required after conviction of some indictable offense, in which case it forms part of the judgment of the court, and is founded on a power incident to courts of record by the common law, or it is demanded by judges or justices of the peace out of court, before the trial of the person charged with an offense, in pursuance of authority derived from a statute, made in the 34th year of Edward III. It is this last kind of surety we are now to consider. The statute 34 Edward III, authorizes justices of the peace to take surety for good behavior of all those that are not of good fame, to the intent that the public may not be troubled by such persons. It is supposed that this statute was made to prevent the disorders which were introduced by the soldiers of Edward the Third, numbers of whom, after serving in his armies in France, were discharged in England. The natural meaning of the words 'persons not of good fame' seems to be, those who by their general evil course and habits of life had acquired a bad reputation, and were supposed to be dangerous to the community. In process of time, however, the construction of these expressions has been extended far beyond their original meaning, and persons are now commonly held to find surety for their good behavior, who are not generally of ill fame, but have only been charged with some particular offense. . . .

"Upon the whole, the most that can be said with regard to recognizances for good behavior is, that they are demandable or not, at the discretion of the judge. They differ from recognizances to keep the peace, in two important features: 1. Surety for good behavior is more extensive in its nature than surety for the peace, and may be more easily forfeited, and therefore should be exacted with greater caution. 2. Surety of the peace is demandable of right by any individual who thinks himself in danger of bodily hurt, and will make the necessary oaths; but this principle has not been applied to surety for good behavior."

Sec. 1, Act of April 1, 1909, P. L. 89, amending Sec. 3, Act of April 23, 1903, P. L. 274.

Manual, 348.

Sec. 3, Act of June 27, 1923, P. L. 850, amending part of Sec. 9,

98. Q. How are probation officers appointed?

A. Outside Philadelphia and Allegheny County they are appointed by the Quarter Sessions "Court."

In Philadelphia they are appointed by the board of judges of the Municipal Court.

Act of July 12, 1913, P. L. 711.

Manual, 352.

In Allegheny County the presiding judge of the County Court appoints the chief probation officer "and such additional probation officers as the majority of the judges may determine."

Sec. 1, Act of April 7, 1925, P. L. 160, amending Sec. 1, Act of March 30, 1917, which amended Sec. 3, Act of March 19, 1915, P. L. 5, which supplemented Act of May 5, 1911, P. L. 198.

Sec. 1, Act of April 1, 1909, P. L. 89, amending Sec. 3, Act of April 23, 1903, P. L. 274.

Manual, 348.

99. Q. What are the duties of probation officers?

A. The duties are:

1. To make such investigation as may be required by the court;

2. To be present in court when the case is heard;

3. To furnish to the court such information and assistance as the judge may require;

4. To take such charge of any child, before and after trial, as may be directed by the court.

The description of the duties of a probation officer has stood unchanged in the law since 1903.

100. Q. Is it proper for probation officers to seek early contacts with troublesome children who have not been brought into court, in order that preventive work may be done?

A. Such service has been held to be outside the province of duties of a probation officer, especially if it entails neglect of the regular probation work.

Administration of the Juvenile Court, 17 Pa. Dist. 207.

"'Preventive work,' as it is called, is a blessed and beneficent work but it is not the duty of the probation officer, as an officer of the court, to enter upon such special work, with the possible necessary neglect of probation work, properly so called . . . If there are others who can engage in this preventive work, God speed them in their labors. Such is the work of the churches, schools and benevolent societies and individuals. It is not an obligatory part of the work of the juvenile court or its officers."

101. Q. What qualifications must a probation officer have?

Sec. 1, Act of April 1, 1909, P. L. 88.

Manual, 348.

A. He or she must be a "discreet" person "of good character."

102. Q. What salaries can be paid probation officers?

Sec. 1, Act of April 1, 1909, P. L. 89; Sec. 1,

A. Outside Philadelphia and Allegheny Counties the salaries are fixed by the court but the law

Act of July 10, 1919, P. L. 885.

Manual, 348, 349.

Sec. 3, Act of June 27, 1923, P. L. 850.

Manual, 352.

Act of May 19, 1923, P. L. 267.

specifies that they shall not exceed $150 per month and an allowance for expenses.

In Philadelphia the legal maximum for the chief probation officer is $5000 per year and $2500 for the other probation officers.

In Allegheny County there is no statutory maximum for probation officers' salaries.

Besides ordinary travel expense incurred in the performance of official duties, traveling and hotel expenses of probation officers attending annual meetings of the State Probation Association and annual dues not to exceed five dollars may be chargeable to the county.

103. Q. How are the salaries of probation officers fixed in Allegheny County?

Sec. 1, Act of April 7, 1925, P. L. 160.

A. "The compensation of all employes of said juvenile court shall be fixed by the salary board. The presiding judge of the said court shall constitute a member of the salary board when such salaries are to be fixed."

The Allegheny County salary board regularly consists of the county controller and the county commissioners and the head of each department whose budget is under consideration. This executive or judicial officer is "entitled to vote so long as the matter affecting his office is under consideration, and no longer; and a decision of the majority shall govern."

Secs. 1, 2 and 3, Act of April 29, 1915, P. L. 200.

## III. DETENTION OF CHILDREN AND DETENTION HOUSES.

104. Q. Does the law recognize any necessity for regularly holding a child offender pending his hearing, as a measure of protecting society or of his running away?

A. Not if the child gets into the jurisdiction of the juvenile court which is to proceed solely from the point of view of its welfare. If, however, the child's case is tried in the regular criminal courts, he is detained in the same manner as an adult is held.

105. Q. What arrangements have been made in the law for the special protection of children pending their hearings?

Act of May 13, 1889, P. L. 192.

Manual, 356, 357.

A. In 1889 it was required that in cities of the first and second class (Philadelphia and Pitts-

burgh) every police station to which women or children were sent must have a police matron, who was to be "a competent female officer." Henceforth it was to be her duty to "receive, search, take charge of and properly care for all female prisoners and children" who were brought to the station house. Their salaries were to be fixed in the same manner as were those of other police officials, but the law specified $30 per month as the minimum and $100 per month as the maximum. This law is still in effect.

The unsuccessful attempt of 1893 to deflect children's cases from the regular course of criminal procedure has been described in Question 29. Inasmuch as the decision declaring the act unconstitutional is entirely directed toward the provision of Section 2, it is possible that Section 1 still stands unassailed. It specified that " no child under restraint or conviction, under sixteen years of age, shall be placed in any apartment or cell of any prison or place of confinement, or in any court room during the trial of adults, or in any vehicle of transportation in company with adults charged with or convicted of crime.

Manual, 370.

Act of May 12, 1897, P. L. 65.

In 1897 efforts to secure legislative authorization for a separate house of detention in Philadelphia seem to have been successful. The circumstances leading to this action are recited in the preamble of the act passed that year which sets forth that "there are annually in the City of Philadelphia about two hundred and sixty juvenile offenders, mostly boys between the ages of eight and sixteen years, committed to the county prison and therein locked in a felon's cell who receive the stigma of being in prison, many of them for a first and trivial offense, and though fifty per centum are discharged before trial and twenty-five per centum at the trial by the magistrate."

This curious preamble also reveals that "there is a growing desire on the part of the Pennsylvania Prison Society and many philanthropic people to have established a house of detention for juvenile offenders below sixteen years, to be located in the neighborhood of the county prisons." It further recites that: "It is very desirable to remove such a stigma on the young offender, and try to reclaim him or her to the better walks of life, and believing that if the object be made known some benevolent per-

sons will combine to make such a house or houses of detention a success speedily; and WHEREAS, it is thought desirable to purchase some large, old-fashioned house that can be remodeled or adapted, or to erect a suitable building or buildings, with the approval of the mayor of the city, the chief of the department of public safety, the president of the board of inspectors of the county prison, and their prison agent, as to location, arrangement of such building and equipment, that said house or houses of detention when fully completed may be transferred free of cost to the city authorities, and cared for in the same manner as the county prisons."

With this review of the needs of the situation and of the prospects of getting some benevolent people to do something, the act proceeds to empower the city or "any reputable society connected with prison work, associated with other benevolent donors" to build or to purchase and alter a house or houses for this purpose. For this action the approval of the mayor, the chief of the department of public safety, the president of the county board of prison inspectors and their prison agent was required.

Act of May 12, 1897, P. L. 65.

Manual, 371.

This institution was to be operated by an unpaid board of five managers appointed by the mayor. They were to "manage and direct in connection with the mayor and department of public safety the business thereof."

Act of May 12, 1897, P. L. 65.

Evidently it was to benevolent donors rather than to the city itself that hope was then pinned for getting this institution, for the act states "That when fully completed for occupancy and transferred free of cost to the city authorities" the cost of maintaining it was to be "provided for in the same manner as the county prisons."

Act of May 12, 1897, P. L. 65.

Manual, 373.

When all was ready for occupancy the mayor was to notify "the committing magistrate" that all "untried juveniles" were to be sent to this house of detention "in place of the county prison." The Quarter Sessions judges and the magistrates were empowered to commit to the proposed house of detention all minors under sixteen charged with any offense against the law while awaiting trial or while "their cases" were "being investigated." The board of managers, on the other hand, were empow-

ered to receive all of these children "except those charged with murder or arson."

In 1901 a new house of detention act was passed which applied to cities of the first and second class. It has not yet been decided whether or not the new act repealed the Act of 1897. Purdon's Digest considers that the former act, which was obviously a piece of special legislation, was thereby repealed, but Pepper and Lewis's Digest makes no reference to the 1897 Act.

This House of Detention Act was passed at almost the same time as the Juvenile Court Act declared unconstitutional in Mansfield's case (see Question 29) by the Superior Court in 1903. The House of Detention Act was attacked in 1911 on the grounds that its title was defective and that it offended against Art. III, Sec. 7, of the constitution which forbids local and special legislation. The Superior Court upheld its constitutionality.

Price v. Walton, 49 Super. Ct. 1.

Act of July 2, 1901, P. L. 601.

Manual, 361.

It requires that cities of the first and second class should provide houses of detention "for the reception of untried juvenile offenders and neglected and dependent children under the age of sixteen years, who may be in the custody of an officer appointed or elected under any laws of this Commonwealth, and whose cases may be under judicial investigation under any laws of this Commonwealth, pending such investigation and final determination of such case or cases." It was provided in Section 8, however, that "It shall not be essential to commit a delinquent . . . child to the house of detention . . . if, in the judgment of the probation officer now or hereafter to be appointed under any present existing law or laws of this Commonwealth, it should be deemed expedient to otherwise dispose of said child." This section seems to refer to the probation officers who were to be provided under the 1901 Juvenile Court Act which had been signed by the Governor about five weeks before this act was signed.

Mar 368.

Sec. 6, Act of May 21, 1901, P. L. 279.

The duties of the probation officers were somewhat differently described in that act from the duties prescribed by later legislation. The 1901 Juvenile Court Act provided that: "The court shall appoint or designate one or more discreet persons, of good character, to serve as probation officers during the pleasure of the court; said probation officers to receive no compensation from the public treasury. In case

a probation officer shall be appointed by any court, it shall be the duty of the clerk of the court, if practicable, to notify the said probation officer in advance when any child is to be brought before the said court; it shall be the duty of the said probation officer to make such investigation as may be required by the court, to be present in order to represent the interests of the child when the case is heard, to furnish to the court such information and assistance as the judge may require, and to take such charge of any child before and after trial as may be directed by the court."

The inference seems fairly clear that the object of Section 8 of this act was not to exclude from the house of detention the more serious child offenders but rather to express in the law the thought, later more clearly formulated in the Juvenile Court Act of 1903, that some child offenders do not need to be held in special detention quarters of any kind pending the disposition of their cases.

Sec. 2, Act of April 23, 1903, P. L. 274. This section was amended by Sec. 2, Act of June 28, 1923, P. L. 898, but this portion was left unchanged.

In 1903 the Juvenile Court Act provided that "pending the final disposition of any case, the child shall be subject to the order of the court, and may be permitted to remain in the control of its parents or the person having it in charge, or the probation officer, or may be kept in some place provided by the State or county authorities, or by any association having for one of its objects the care of delinquent or neglected children, as the court may order."

Sec. 7, Act of April 23, 1903, P. L. 274.

It further specified that "no child, pending a hearing under the provisions of this act, shall be held in confinement in any county or other jail, police station, or in any institution to which adult convicts are sentenced."

Act of April 3, 1903, P. L. 137.

To provide for detention quarters outside of cities of the first and second class a special act was passed at about the same time as the 1903 Juvenile Court Act. It provided that "It shall be the duty of the board of county commissioners, in each county of the Commonwealth, to provide in the county a separate room or rooms, or a suitable building, to be used exclusively for the confinement of any and all children, under the age of sixteen years, who may be in custody, awaiting trial or hearing in the courts of the county."

Act of July 21, 1913, P. L. 870.

Manual, 353.

This act was amended in 1913 so that it now reads: "It shall be the duty of the board of county commissioners, in each county of the

Commonwealth, to provide, furnish and heat, within the county, a separate room, or rooms, or a suitable building, to be used exclusively for the confinement of any and all children, under the age of sixteen years, who may be in custody awaiting trial or hearing in the courts of the county, and to provide for the maintenance and care of such children while in custody.''

106. Q. Who are responsible for the proper management of the houses of detention?

Sec. 2, Act of July 2, 1901, P. L. 601.

A. For cities of the first and second class (Philadelphia, Pittsburgh and Scranton) it is provided that ''the judges of the Courts of Oyer and Terminer and General Jail Delivery and the Courts of Quarter Sessions of the Peace having jurisdiction in the said respective cities,'' shall appoint a board of managers, consisting of five members, of whom two must be women.

Act of April 26, 1917, P. L. 108.

Manual, 417.

In 1917 the power of appointment of this board was in Philadelphia County transferred absolutely from the judges of the Courts of Oyer and Terminer and General Jail Delivery and Quarter Sessions to the judges of the Municipal Court. The act says that ''the Municipal Court . . . shall have exclusive jurisdiction over all houses of detention that are now or may hereafter be established within the limits of the city of Philadelphia, for the care of delinquent . . . children.''

Act of May 17, 1921, P. L. 840.

Manual, 359, 360.

For counties of the third class (Lackawanna, Luzerne and Westmoreland) it is provided that ''hereafter, in counties of the third class of this Commonwealth, the exclusive jurisdiction over all houses of detention for the reception of untried juvenile offenders and neglected and dependent children, under the age of sixteen years who may be in the custody of an officer appointed or elected under any law of this Commonwealth, and whose case may be under judicial investigation, shall be vested in a board of managers, which shall consist of the county commissioner, the sheriff, and the county controller of the county wherein such houses of detention are established; and the board of managers in charge of any such house or houses now in office are hereby abolished.'' ''The said board of managers shall have the same power and authority now provided by the laws of this

Commonwealth relating to such houses of detention."

107. Q. How are these two acts reconciled in the case of Scranton in Lackawanna County?

A. The Act of 1921 supercedes that of 1901.

108. Q. Who is responsible for houses of detention outside of (1) cities of the first and second class and (2) third class counties?

A. The county commissioners.

109. Q. What provision is made for children from the territory outside in the counties in which first and second class cities are located?

Act of May 7, 1921, P. L. 840.

Manual, 359, 360.

A. Philadelphia, now the only first class city, is coterminous with the county. Pittsburgh and Scranton are the only second class cities. Scranton has come under new legislation which makes its house of detention a county institution.

Before this legislation was passed, however, it had been decided that under the Act of July 2, 1901, P. L. 601, "The Board of Managers of the House of Detention are performing not a municipal, but a county function in maintaining a place for the confinement of children awaiting trial in a court of justice." Thus the house of detention in Pittsburgh is open to children from all of Allegheny County.

Price v .Walton, 49 Super. Ct. 1.

110. Q. Upon what terms do the managers of houses of detention in first and second class cities serve?

Sec. 3, Act of July 2, 1901, P. L. 601.

Manual, 363.

A. They serve without compensation and "hold office for two years and until their successors are appointed, subject to removal by the judge of the said court." (See Question 106.)

Sec. 2, Act of April 26, 1917, P. L. 108.

Manual, 418.

In Philadelphia they "have the same power and authority," serve for the same terms and are subject to the same supervision as had been in 1917 provided by law, "subject, however, to removal from office by the judges of the Municipal Court of Philadelphia."

111. Q. What are the duties of the board of managers of the houses of detention operated under the Act of 1901?

Sec. 4, Act of July 2, 1901, P. L. 601.

Manual, 364.

A. Several are stated in the law:

(1) To provide a house or houses, by leasing the same or otherwise, for the re-

ception of children . . . to alter said house or houses for such purpose, to keep the same in repair, and generally to fit and furnish said house or houses so that the same may be suitable for the care of the children intended to be received, and especially to arrange such house or houses so that a separate room (so far as possible) may be provided for the accommodation of each child who may be received therein;

(2) Generally to supervise and oversee the management of said house or houses;

Sec. 7, Act of July 2, 1901, P. L. 601.

Manual, 367.

(3) To appoint a man and woman to take charge of the house and children committed to such house of detention, and generally to maintain order and discipline among the children so committed into their keeping.

112. Q. Are there any other stipulations regarding the manner in which the children are to be housed and cared for?

Sec. 6, Act of July 2, 1901, P. L. 601.

Manual, 366.

A. "Not more than twenty-five (25) children shall be received into any single house of detention . . . Whenever it shall be necessary to accommodate more than twenty-five (25) children of the class hereinbefore defined (pending such judicial disposition), it shall be the duty of the board of managers to provide an additional house or houses to accommodate such other children."

113. Q. How are the expenses of houses of detention borne?

Secs. 5 and 9, Act of July 2, 1901, P. L. 601.

Manual, 365, 369.

Price v. Walton, 49 Super. Ct. 1.

A. By the counties, "as the cost and expenses of maintaining county prisons are now provided." Itemized statements of expenses incurred are to be presented to the county commissioners, "who shall be required to pay the said expenses."

114. Q. Are there any stipulations regarding the management of houses of detention in third class counties?

Act of May 17, 1921, P. L. 840.

A. No. The act regulating them says that the board of managers shall have the same "power and authority" as the laws of the Commonwealth then provided "relating to such houses of detention," but nothing is said about duties.

115. Q. Are there any requirements regarding houses of detention outside of first, second and third class counties?

A. No.

116. Q. Do the laws relating to houses of detention make it mandatory upon police and other officials to use them?

Act of July 2, 1901, P. L. 601; Act of July 21, 1913, P. L. 870.

A. No. These laws require that suitable places be provided and permit the managers to receive any child "awaiting trial or hearing in the courts of the county" but they do not say that any child awaiting trial or hearing cannot be detained in any other quarters.

Sec. 7, Act of April 23, 1903, P. L. 274.

As has already been pointed out, if a child comes within the juvenile court's jurisdiction he cannot be detained in a jail, police station or in any institution to which adult convicts are sentenced.

It is the practice of the police department in Philadelphia to take every child apprehended immediately to the House of Detention.

117. Q. Are houses of detention subject to State inspection by the Department of Welfare?

Secs. 2001, 2003 and 2004, Act of June 7, 1923, P. L. 498.

Manual, 280.

A. Yes, they fall within the definition both of "Children's Institutions" and of "Supervised Institution" and as such are subject to at least annual inspection by the department.

118. Q. Are houses of detention subject to inspection by any local visitorial bodies?

Sec. 2005, Act of June 7, 1923, P. L. 498.

Manual, 288.

A. Yes, two such bodies. The State Department of Welfare has the power to appoint a board of "three or more members in any county of the Commonwealth to act, without compensation, as a board of visitors to visit any supervised institution in such county in aid of, and as the representative of, the department; such board to make a report of such visitation as the department may require. It shall be the duty of the officers or other persons having charge of such supervised institution to afford full facilities for such board to make an examination and inspection thereof."

Act of June 6, 1913, P. L. 452, amending Act of Feb. 26, 1903, P. L. 8.

Manual, 411.

The law states that "it shall be the duty of the Court of Common Pleas in each county within this Commonwealth to appoint a board, consisting of six or more reputable citizens, who

shall serve without compensation, to constitute a Board of Visitors, whose duty it shall be to visit, at least onee a year, all institutions, societies, and associations, within the county, into whose care and eustody dependent, neglected, and delinquent children shall be committed under the provisions of the laws of this Commonwealth; and all charitable, reformatory, or penal institutions, and all institutions, within the county, which receive their inmates from more than one county, and are supported and managed, in whole or in part by the Commonwealth, or any of the officers thereof; and all institutions, within the county, which are wholly supported and managed by any eity, county, borough or poor distriet of the Commonwealth. Sueh visits shall be made monthly by not less than two of the members of the board, who shall report to the board. The said Board of Visitors shall make reports to the court, from time to time, on matters pertaining to the welfare of the institutions, particularly the treatment received by the inmates. A copy of such report shall be submitted by the board to the persons in charge of such institutions, societies, and associations. The board shall make an annual report to the Board of Public Charities. The said Board of Visitors shall be entitled to receive, from the eounties in whieh they shall be appointed, such sum or sums of money for actual and neeessary expenses as may be approved by the board of county commissioners in their respeetive counties."

119. Q. When a petition or certification from a magistrate has been filed can a child be released "on his own reeognizance," *i. e.* simply on his own word that he will appear in court at a eertain time or when notified that he is wanted?

A. There seems to be nothing specific in the law in regard to this point. In general, the judge of the juvenile eourt is invested with a large measure of diseretion but the laws seem to imply that in the use of this diseretion the responsibility for eustody will be placed rather speeifieally and that the parent or some other adult eustodian, including the probation officer, will be held accountable for the child and his appearance in court rather than that the court will undertake to earry on transaetions with the child, himself.

## IV. COUNTY SCHOOLS FOR JUVENILE COURT CHARGES.

120. Q. What provision has been made in the law for creating county institutions for juvenile court wards?

Manual, 477.

A. Several acts relating to this subject have been passed. They began with the Act of May 1, 1909, P. L. 302. This act referred only to schools for boys in counties with a population of from 300,000 to 1,200,000 and was three times amended; by the Act of March 15, 1911, P. L. 18; Act of May 11, 1911, P. L. 262 and by the Act of May 20, 1913, P. L. 263.

In 1915, the Act of May 5, P. L. 244, was enacted actually to empower Allegheny County to provide a county institution for girls who were juvenile court charges. It specified, however, that it was to apply to counties of 750,000 to 1,200,000 population. This act was declared unconstitutional because the classification of the counties was on an arbitrary and artificial basis which brought the act under the ban of local and special legislation.

Commonwealth ex rel. Brown v. Gumbert, et al., 256 Pa. 531.

Although the Acts of 1909, 1911 and 1913 could not be attacked on the same ground as the Act of 1915, it evidently aroused some doubt regarding the earlier acts. In order that the validity of action taken under the 1909 Act, that is, the organization and operation of the Thornhill School in Allegheny County, should be unquestioned, the Act of May 29, 1917, P. L. 313, was passed. It provided that: "Whenever heretofore any county of this Commonwealth, under or by virtue of . . . (the Act of May 1, 1909, P. L. 302, or its supplements) . . . has established and maintained a school for the care and education of male children under the jurisdiction of the juvenile courts, all acts done, all contracts and expenditures made by virtue of, and all obligations issued under, the provisions of said act, are hereby validated, ratified, and confirmed, to the same extent and with like effect as if the said act had applied to each and every county within this Commonwealth and to the same extent as if such Act of Assembly was constitutional and valid." "That whenever any county, under and by virtue of said Act of Assembly, has acquired any land for any such school or

Act of May 29, 1917, P. L. 313.

schools, either by purchase or by condemnation, the title thereto shall vest in the county which paid therefor, and shall be deemed good and valid in law for all purposes, to the same extent as if such act of Assembly applied to all counties in this Commonwealth and was constitutional and valid."

Sec. 14, Act of July 5, 1917, P. L. 693.

By the Act of July 5, 1917, P. L. 693, a comprehensive scheme applying to all counties was enacted into law. It has not been amended since that time. This act definitely repealed the Act of 1915, but not those of 1909, 1911 and 1913. It required, however, that schools previously organized under acts for a similar purpose should come immediately under its provisions.

121. Q. How can such a school be inaugurated?

Secs. 1 and 2, Act of July 5, 1917, P. L. 693.

Manual, 463, 464.

A. Whenever, in the opinion of the county commissioners or a majority of them, a school or schools for juvenile court charges "are required in any county for the proper care and education of such children," the commissioners may petition the Court of Common Pleas of the county for approval and order to proceed.

122. Q. Is it necessary before proceeding to build the school, to secure the consent of the State Department of Welfare, as is the case with county prisons and almshouses?

Attorney General's Opinion, In re Juvenile Court Institutions, 21 Pa. Dist. 720.

A. No.

123. Q. Are there any age or sex restrictions on the children who are to be sent to these schools by the juvenile court?

Sec. 12, Act of July 5, 1917, P. L. 693.

Manual, 465.

A. No. The law provides that the county may either build a school for boys or a school for girls, or separate schools for each sex or one school for both sexes. The juvenile court has jurisdiction from birth to the age of sixteen, and in some cases, to twenty-one. (See Questions 4 and 22.)

124. Q. Are there any restrictions as to the types of children to be sent to these schools?

Commonwealth, ex rel. Elizabeth Kelley, appellant v. Michael J. Kelley, 83 Super. Ct. 17.

A. Legally the juvenile court has jurisdiction over four classes of children: delinquent, incorrigible, dependent and neglected.

Several acts indicate that the Legislature wishes a sharp distinction drawn between those

whose behavior is the occasion for the action, *i. e.* the delinquent and incorrigible, and those who are not themselves offenders, *i. e.* the dependent and neglected.

Sec. 10, Act of April 23, 1903, P. L. 274.

Manual, 381.

The original juvenile court act provided that "it shall not be lawful to commit the custody of any neglected or dependent child . . . to any institution of correction or reformation in which delinquent children are received, nor shall any delinquent child be committed to any institution in which dependent or neglected children are received."

A legal evasion of this is sometimes practised by committing the child to the probation officer who then boards it in any institution he wishes.

Nothing other than this provision in the Juvenile Court Act stands in the way of sending all types of children to these county institutions, if the courts so wish.

125. Q. Must the school receive any child committed by the court?

Sec. 8, Act of July 5, 1917, P. L. 693.

Manual, 475.

Juvenile Court, No. 7943, 21 Pa. Dist. 535.

A. Technically, yes. "Said school shall receive children upon commitment of" the juvenile court. "A commitment is a command to the person or institution to which it is directed to keep the person named in the commitment until he or she shall be discharged by due course of law."

126. Q. Are these institutions penal or reformatory in character?

A. The act states that these schools are to be so constructed and operated "that the said schools may be supplementary to the public school system of the Commonwealth."

127. Q. Are these schools under the direction of any public school authorities?

A. No.

128. Q. Are these schools under any form of supervision of the public school authorities?

A. From the point of view of the School Code they could be counted as private schools, and come under the State requirements of curriculum and of State inspection for such schools.

129. Q. Are these institutions subject to inspection by the State Department of Welfare?

Attorney General's Opinion, In re juvenile court institutions, 21 Pa. Dist. 720.

A. Yes. They fall within the definition of a "supervised institution."

Sec. 2001, Act of June 7, 1923, P. L. 498.

130. Q. Who in the county is to be responsible for the proper operation of these schools?

Secs. 3 and 13, Act of July 5, 1917, P. L. 693.

Manual, 470, 471.

A. A board of nine managers, appointed by the Court of Common Pleas. Each year three managers are to be appointed for three-year terms. If the county establishes separate schools for boys and for girls, the Court of Common Pleas, may, if it wishes, constitute the same board, as managers of both schools. Any school which takes girls must have on its board of managers, at least one woman.

131. Q. What are the powers of this board?

A. It is to:

Sec. 4, Act of July 5, 1917, P. L. 693.

Manual, 472.

(1) Manage, supervise and regulate the conduct of the school or schools;

Sec. 10, Act of July 5, 1917, P. L. 693.

Manual, 474.

(2) Elect a superintendent and such teachers, officers and employes as are necessary for the proper management of the school;

Sec. 4, Act of July 5, 1917, P. L. 693.

Manual, 472.

(3) Recommend to the county commissioners the amount of money required for the establishment and the annual maintenance of the school or schools;

Sec. 4, Act of July 5, 1917, P. L. 693.

Manual, 472.

(4) Report at least every six months to the county commissioners in the form prescribed by the commission.

132. Q. What qualifications must the employes have?

Sec. 7, Act of July 5, 1917, P. L. 693.

Manual, 473.

A. The superintendent must be "a person trained in educational and social work." No other mention is made in the law of qualifications of any of the personnel including the board of managers.

133. Q. How are the employes' salaries fixed?

Sec. 10, Act of July 5, 1917, P. L. 693.

Manual, 474.

A. Both the number and the salaries of the employes are to be fixed by the board of managers, "with the approval of the county commissioners and the county controller" or county auditor.

134. Q. What powers are to be exercised over the children?

Sec. 7, Act of July 5, 1917, P. L. 693.

A. The superintendent has the power of detention over the children committed to the institution.

Manual, 473.

135. Q. Does the institution have the power of parole?

Sec. 7, Act of July 5, 1917, P. L. 693.

A. Apparently not. The law provides that "when any child committed to said school shall have attained a condition of mental and moral advancement satisfactory to the superintendent and the board of managers, they shall so certify to the juvenile court which committed said child to said school; whereupon the said court may order the release of said child, upon parole."

Manual, 476.

136. Q. Who is to supervise the child on parole?

Sec. 7, Act of July 5, 1917, P. L. 693.

A. That is not perfectly clear in the act. The child is to be paroled by the court "under conditions which shall be prescribed by" the board of managers "by general rule and subject to the approval of the proper juvenile court." In case the child's behavior on parole is unsatisfactory *to the board of managers,* the board is to certify that fact to the court which may return the child to the school. It seems to be clearly implied, though it is not definitely stated, that the school is to provide supervision of paroled children.

Manual, 476.

137. Q. For how long a period may the child be kept on parole?

Sec. 7, Act of July 5, 1917, P. L. 693.

A. Throughout its minority. At any time within that period the court may order the return of the child to the school "where it shall remain, subject to the same control as when originally committed thereto."

Manual, 476.

138. Q. In what manner can a child under twenty-one be discharged entirely from custody?

A. The act makes no mention of the manner in which this is to be done. Presumably it can only be done with the approval of the board of managers and upon order of the juvenile court.

139. Q. Are there any intimations as to the type or kind of institutions these are to be?

A. Yes, there are some suggestions in the law but they are not very concrete.

Sec. 6, Act of July 5, 1917, P. L. 693.

(1) The schools are to be located upon farms, "or at such other places" as may

be selected by the commissioners with the approval of the board of managers.

(2) The schools are to be established on the "Cottage Home plan" but there is no further definition of this term nor is there any limitation on the size of the groups to live in the cottages. It is not unusual to find an institutional "cottage" housing as many as thirty or more children.

140. Q. Are there any further requirements regarding the plant for the school?

Sec. 5, Act of July 5, 1917, P. L. 693.

Manual, 466.

A. Yes, the buildings are to be "substantially constructed, and adequately lighted, and ventilated, and provided with baths, playrooms, sleeping rooms and kitchens, and there shall be adequate provisions for playgrounds."

141. Q. What education are the children to receive?

A. There shall be according to this act "provisions for instruction in the common branches, and for manual, domestic and moral training, to the end that said schools shall as far as possible during the period of detention, adequately provide for the mental, moral and physical welfare and advancement of the children therein detained."

142. Q. What are now "the common branches?"

Act of May 20, 1921, P. L. 980, amending Sec. 1607, Act of May 18, 1911, P. L. 309 (The School Code).

A. Probably what the law requires to be taught in all elementary schools. The School Code makes mandatory on every elementary and private school in the Commonwealth, the teaching of the following subjects in the English language and from the English texts: "English, including spelling, reading and writing, arithmetic, geography, the history of the United States and of Pennsylvania, civics, including loyalty to the State and National Government, training in safety first methods, and the humane treatment of birds and animals, health, including physical training and physiology, music, art."

It is further provided in the School Code (Sec. 1609) that physiology and hygiene shall be introduced and studied as a regular branch by all pupils in all departments of the public schools of the Commonwealth and in all educational institutions supported wholly or in part by money from the Commonwealth. Moreover, these subjects must include special reference "to the effect of alcoholic drinks, stimulants and

narcotics upon the human system'' and to tuberculosis and its prevention.

143. Q. How is the establishment of these institutions to be arranged and financed?

Sec. 6, Act of July 5, 1917, P. L. 693.

A. The county commissioners are given the same powers of purchase and of condemnation of land to be used for this purpose, as are exercised by school directors for school purposes.

Sec. 9, Act of July 5, 1917, P. L. 693.

They are also empowered to levy taxes, to borrow money and to incur indebtedness for the purpose of acquiring lands and erecting buildings and for enlarging, extending or making additions to the plant. They are authorized to float 30-year ''registered or coupon'' bonds, if necessary, at interest not to exceed 6 per cent. to meet the immediate cost of such an undertaking. If bonds are issued, a sinking fund must be provided for and the commissioners may levy and collect taxes on all taxable property in the counties, in addition to all other taxes, to meet this bonded obligation.

The county commissioners may also appropriate from general funds to establish these schools.

144. Q. How are these schools to be currently financed?

Sec. 9, Act of July 5, 1917, P. L. 693.

A. The county commissioners are empowered to appropriate annually out of the general funds of the county such sums as may be necessary to maintain them.

145. Q. What other institutions may local communities provide for child offenders?

A. In counties of less than 250,000, that is, in all but first, second and third class counties, the county commissioners ''by and with the consent of'' the grand jury and the Court of Quarter Sessions may build or otherwise provide a county children's home ''for the keeping, care, education, and training of . . . incorrigible, indigent, dependent and neglected children of either sex, under sixteen years of age, who shall be committed . . . by the . . . juvenile court of the county, or by the county commissioners, poor directors of said county, or the poor directors of any district within the county, by and with the consent of the juvenile court of the county . . . ''

Act of May 16, 1921, P. L. 666.

Manual, 534 to 542.

## V. CONTRIBUTING TO THE DELINQUENCY OF A MINOR AND RELATED OFFENSES OF ADULTS.

146. Q. What are the powers of the juvenile court over those who contribute to the delinquency of a minor?

Eleventh Annual Report of the Municipal Court of Philadelphia, 1924, p. 11.

A. Logically it has no powers over them. It is not a trial court. Its jurisdiction over offending persons does not extend beyond "juveniles" except to make orders for support on parents and to prosecute those held in contempt of court for not obeying these orders. In the case of other offenses against children, the juvenile court judge can sit only as a committing magistrate and remand offenders to the proper criminal court.

147. Q. How is the offense of contributing to the delinquency of a minor defined?

Act of May 6, 1909, P. L. 434.

Manual, 301, 302.

A. "All persons who contribute to the delinquency of any minor to whom the jurisdiction of any juvenile court within this Commonwealth has attached, or shall hereafter attach, or who knowingly assist or encourage such minor in violating his or her parole or any order of the said court, shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not more than five hundred dollars or to undergo imprisonment for a term not exceeding one year, or both, at the discretion of the court . . . knowledge of the delinquents minority, and of the said court's orders and decrees concerning such minor, shall be presumed in the absence of satisfactory proof of the contrary."

148. Q. Is this offense of frequent occurrence?

A. Probably. Children who offend while on probation or under other court order or who are on parole are often associated with others who "contribute" to their delinquency. Often it is well known that these adults exert an evil influence on the youth of the neighborhood.

149. Q. Are prosecutions frequent under this law?

A. No, they are comparatively rare.

150. Q. Upon whom devolves the principal responsibility for finding and prosecuting these people?

A. On the probation officers, because they are supposed to be following closely the behavior of the child and to know when an adult encourages or assists him to violate his probation or parole.

151. Q. Is there any offense of contributing to the delinquency of a minor who has not yet become a juvenile court charge?

A. No, but there are several specific offenses of adults which are closely related to juvenile delinquency.

Sec. 1, Act of March 24, 1909, P. L. 59, No. 34.

Manual, 605.

(1) It is a misdemeanor knowingly to send any minor for any purpose to an immoral resort; violation punishable by a fine of not more than one thousand dollars or imprisonment not more than one year or both.

Sec. 2, Act of May 29, 1907, P. L. 318.

Manual, 606.

(2) It is a misdemeanor for a parent or other custodian to permit a child under sixteen to be or remain in a house of prostitution or in one in which opium or any of its derivatives is smoked; violation punishable by a fine of not more than one thousand dollars or imprisonment not more than two years or both.

Sec. 1, Act of May 15, 1874, P. L. 179.

Manual, 608.

(3) It is a misdemeanor for any parent or custodian to permit and for any person to make, use of a minor under the age of eighteen to beg, to sing or to play a musical instrument for any mendicant business whatsoever on any streets, roads or highways in the State; violation punishable by fine of from fifty to two hundred and fifty dollars or imprisonment in a county jail for not less than sixty days or both.

Sec. 3, Act of June 11, 1879, P. L 142.

Manual, 609.

For the parent or custodian thus to use a child is a misdemeanor punishable by fine of from fifty to one hundred dollars:

Secs. 2 and 4, Act of June 11, 1897, P. L. 142.

(4) It is a misdemeanor punishable by fine of from fifty to one hundred dollars.

Manual, 610, 611.

(a) For a parent or custodian to permit or hire out or for a proprietor to employ a child under fifteen to sing, play, or act or exhibit in any dance hall or place of entertainment, in which alcoholic liquors are sold or given away or which is connected by passage way or entrance with any such place;

(b) For a parent or custodian to hire out or permit or for any person to employ any minor for any obscene, indecent or "illegal" exhibition or vocation or for the purpose of prostitution;

(c) For any person to harbor or employ any minor in or about any assignation house or brothel or in any place where any obscene or indecent or illegal exhibition takes place;

Sec. 1, Act of May 16, 1901, P. L. 220.

Manual, 612.

(5) It is a misdemeanor punishable on first offense by fine of from fifty to one hundred dollars and on second offense by imprisonment of from one to three years, to advertise for or to secure the services of any child under eighteen without the consent of parent or guardian, to take part in any theatrical performance, or athletic exhibition or to sing or to play upon musical instruments.

Act of July 8, 1919, P. L. 777.

It is an offense punishable on summary conviction with a fine of ten dollars for the first and twenty-five dollars for a subsequent offense for anyone responsible for operating a motion picture theatre to admit a child between eight and fourteen years while public school is in session unless the child is accompanied by parent or guardian or has a special permit from his teacher.

Sec. 1, Act of May 28, 1885, P. L. 27..

Manual, 616.

(6) It is a misdemeanor punishable by imprisonment at hard labor not more than five years or by fine of not more than one thousand dollars or both to take a female under sixteen, for the purposes of prostitution or sexual intercourse or for the purpose of marriage without the consent of parent or guardian, or to entice her into a house of prostitution or assignation or elsewhere for the purpose of prostitution or sexual intercourse.

Sec. 1, Act of May 19, 1887, P. L. 128.

Manual, 618.

It is felonious rape for any person over the age of sixteen to have unlawful carnal knowledge of a woman forcibly and against her will or to "unlawfully and carnally know and abuse any woman child under the age of sixteen years, with or without her consent . . ." provided, however, that upon the trial of a defendant charged with rape of a girl under sixteen, if the jury finds that such girl "was not of good repute and the carnal knowledge was with her consent"

the defendant shall be acquitted of felonious rape and convicted of fornication only.

The penalties for rape are a fine not exceeding one thousand dollars or "imprisonment by separate or solitary confinement at labor, or by simple imprisonment not exceeding fifteen years."

Sec. 9, Act of June 7, 1911, P. L. 668.

Manual, 620.

(7) The license to a pool or billiard room in first class cities can be revoked if the proprietor knowingly allows minors under eighteen to be on the premises or permits them to play pool, billiards or bagatelle.

Sec. 1, Act of April 13, 1859, P. L. 614.

Manual, 621.

In Chester and Delaware Counties no minor is to be permitted in any billiard room, bowling saloon or ten pin alley under pain of the proprietor's forfeiting his license and a fine, in the discretion of the court, up to five hundred dollars.

Act of May 16, 1919, P. L. 193.

In cities of the first, second and third class it is unlawful for a dance hall proprietor to admit any child under the age of sixteen after nine o'clock in the evening unless the child is accompanied by parent or guardian. Violation is punishable by a fine of twenty-five dollars.

Sec. 21, Act of March 11, 1834, P. L. 117.

Manual, 622.

(8) The innkeeper who harbors or "trusts" a minor after the parent or guardian has warned him "to the contrary" cannot collect the minor's debt and may be fined three dollars for the first and second offenses and for the third offense he may be fined fifteen dollars, may forfeit his license and become "forever incapable of receiving a license to keep a public inn within this Commonwealth."

Sec. 2, Act of May 6, 1887, P. L. 84; Sec. 1, Act of May 12, 1897, P. L. 83.

Manual, 623, 624.

(9) The acts dealing with the circulation to minors of obscene publications, pictures, objects or instruments are very comprehensive and define such activities as misdemeanors punishable by heavy fines and imprisonment. These prohibitions extend to any publication devoted to or "principally made up of criminal news, police reports or accounts of criminal deeds, or pictures or stories of deeds of bloodshed, lust or crime."

Act of July 10, 1901, P. L. 638; Act of May 9, 1913, P. L. 198.

Manual, 627 to 631.

(10) It is a misdemeanor to sell or give tobacco in any form to a child under sixteen, or to furnish cigarettes or cigarette paper to a minor.

Act of April 20, 1921, P. L. 152, amending the Act of July 11, 1917, P. L. 758.

Manual, 632.

(11) It is a misdemeanor punishable by fine up to two thousand dollars or imprisonment up to five years or both to sell or give opium or coca leaves or any derivative thereof to a child of twelve years or under except on a physician's or dentist's prescription.

Sec. 1, Act of June 10, 1881, P. L. 111.

Manual, 633.

(12) It is a misdemeanor punishable by fine up to three hundred dollars knowingly to sell or furnish to a child under sixteen any cannon, revolver, pistol or other such deadly weapon or any toy of that character that can be loaded with cartridges, gunpowder or other explosive and with shot, slugs or balls or to sell or furnish him any cartridge, gun-powder or other dangerous or explosive substance.

Sec. 1, Act of May 5, 1899, P. L. 247.

Manual, 636.

(13) It is a misdemeanor punishable by fine up to five hundred dollars, or imprisonment up to a year or both to buy or receive from a person known to be a minor, any junk, rope, scrap iron, brass, lead, copper, or other metal.

Act of June 7, 1911, P. L. 671.

Manual, 637, 638, 639.

(14) It is an offense punishable on summary conviction by fine of five to twenty-five dollars or imprisonment for five days for non-payment of fine within forty-eight hours, for a pawnbroker or his employe to make any loan or advance to or receive any goods from a child under sixteen or for any person to act as an intermediary of such a transaction.

152. Q. Are any of these offenses of adults heard or tried in juvenile court?

A. No. It has no jurisdiction over them.

153. Q. Are juvenile court officials in any way commissioned to proceed against adults charged with these offenses?

A. No.

154. Q. In what way does the standard Juvenile Court Act provide for empowering the court to deal with adult offenders against children?

Standard Juvenile Court Law published by the National Probation Association, Inc., 1926, pp. 12 and 13.

A. It provides that the juvenile court "shall have original jurisdiction to determine all cases of adults charged (a) with contributing to, encouraging, or tending to cause, by any act or omission the delinquency, neglect or dependency of any child; or, (b) with any act or omission with respect to any child, which act or omission

is a violation of any state law or municipal ordinance; or, (c) with desertion, abandonment or failure to provide subsistence. Where the offense charged amounts to a felony, the jurisdiction shall be concurrent; otherwise it shall be exclusive.''

''All provisions of this act relative to procedure in cases of children, so far as practicable shall be construed as applying to cases against adults also, when not inconsistent with other provisions of law relating to the conduct of adult cases. Proceedings may be instituted by an interested party or upon the court's own motion, and a reasonable opportunity to appear

P. 22. shall be afforded the respondent. The court may issue a summons, or in order to secure or to compel the attendance of any necessary person, a warrant of arrest or other process. Upon the trial of such cases the court shall have power to impose such sentence as the law provides, or may suspend sentence and place on probation, and by order impose upon such adult such duty as shall be deemed to be for the best interests of the child or other persons concerned.''

P. 31. ''If an adult is charged with an offense for which he is entitled to a trial by jury, and if he shall so demand, a jury shall be selected in accordance with the provisions of law regulating the selection of juries in the [the name of the court to be inserted will vary from state to state] court.''

## VI. POWERS AND PROCEDURE OF THE COURTS IN THE CASES OF DEFENDANT AND NEGLECTED CHILDREN.

155. Q. How is the juvenile court's jurisdiction in dependency and neglect cases defined?

Sec. 1, Act of June 28, 1923, P. L. 898, amending Sec. 1, Act of April 23, 1903, P. L. 274.

Manual, 339.

A. ''The Courts of Quarter Sessions of the Peace, within the several counties of this Commonwealth, shall have and possess full and exclusive jurisdiction in all proceedings affecting the treatment and control of dependent (and) neglected . . . children, under the age of sixteen years; and for the purpose of this act the words 'dependent child' and 'neglected child' shall mean any child who is destitute, homeless, abandoned, or dependent upon the public for sup-

port or who has not proper parental care and guardianship.''

156. Q. Has this combined definition of the two terms ever been judicially untangled?

A. No, not specifically.

157. Q. Are these terms always coupled in the juvenile court legislation of the State?

Sec. 5, Act of April 23, 1903, P. L. 274.

Manual, 76.

Sec. 1, Act of May 31, 1907, P. L. 331.

Manual, 395.

Sec. I, Act of May 8, 1913, P. L. 177.

Manual, 394.

A. No. The original Juvenile Court Act in one of its sections provides for a special disposition that may be made of a ''dependent'' child.

In 1907 a supplementary act refers to ''any indigent or dependent child.''

An Act in 1913 speaks of the commitment, with an order for the payment of board of ''any neglected *or* dependent child.''

158. Q. How were these definitions in the first Juvenile Court Act worded?

Sec. 1, Act of May 21, 1901, P. L. 279 Repealed.

A. ''For the purpose of this act the words 'dependent child' and 'neglected child' shall mean any child (under sixteen) who, for any reason, is destitute or homeless, or abandoned, or dependent upon the public for support, or has not the proper parental care or guardianship, or who habitually begs or receives alms, or who is found living in any house of ill fame or with any vicious or disreputable person; or whose home, by reason of neglect, cruelty or depravity on the part of its parents, guardian or other person in whose care it may be, is an unfit place for such a child; and any child under the age of eight years, who is found peddling or selling any article, or singing, or playing any musical instrument upon the street, or giving any public entertainment.''

159. Q. Was this definition discussed by the courts when that act was under scrutiny?

Mansfield's Case, 22 Super. Ct. 224.

A. Yes. The court said, ''The term 'dependent and neglected children,' as here used (in the title) unmistakably suggests children who are neglected by their natural protectors and dependent upon the public for the supply of the necessaries of life . . . When in defining the terms 'dependent child' and 'neglected child' . . . it was attempted to make them include more than such terms ordinarily suggest and

make certain specific acts by the child, having no relation to the manner in which the parent took care of his offspring, such as singing, or playing a musical instrument upon the street, to bring the child within the meaning of the term 'dependent,' this expanded the legislation beyond the limits indicated by the title.''

160. Q. Is it likely that this decision influenced the formulation of the definitions in the Act of 1903?

A. Yes.

161. Q. Has the legislative intention of the Act of 1903 been discussed by the courts?

A. Yes, in several decisions, but the legislative intent has never been very definitely construed.

Commonwealth v. Fisher, 213 Pa. 48.

In Commonwealth v. Fisher the court's jurisdiction in these cases is referred to in a general way: ''No new court is created by the act under consideration . . . In caring for the neglected or unfortunate children of the Commonwealth, and in defining the powers to be exercised by that court in connection with these children, recognized by the State as its wards requiring its care and protection, jurisdiction is conferred upon that court as the appropriate one, and not upon a new one created by the act. The Court of Quarter Sessions is not simply a criminal court. . . . it has for generations been a court of broad general police powers in no way connected with its criminal jurisdiction. . . . The Court of Quarter Sessions has for many years exercised jurisdiction over the settlement of paupers, over the relation of a man to his wife and children in desertion cases, in surety of the peace cases, in the granting of liquor licenses, and in very many of the ways in which the public welfare is involved, where there is neither indictment or trial by jury.''

Black, appellant, v. Graham, et al., 238 Pa. 381.

In 1913 it was held by the Supreme Court that ''While the first section of the Juvenile Court Act defines the meaning of the words 'dependent child,' 'neglected child' and 'incorrigible children,' no distinction is to be recognized between the residence of a dependent and an incorrigible child after they have been committed by the court to the custody or care of some reputable citizen of good moral character. The dependent child, as well as the incorrigible

one, is brought before the court under statutory proceedings to enable the court to determine, after a hearing, what order for the commitment and custody and care of the child, its own good and the best interests of the child [?] may require . . . Each child, after being thus committed, is involuntarily placed in the custody of the law—the dependent one no less so than the incorrigible . . . '' The relation of ''guardian of the person'' ''is similar to the parental relation. On the other hand, the relation, established by the order of the juvenile court and the contract made thereunder, is really penal in its nature, and it is not permanent.''

Wolf's Case, 58 Super. Ct. 260.

In 1914 it was held by the Superior Court, ''The powers of the court may be called into exercise in several ways and, amongst them, upon the petition of any citizen resident of the county, setting forth that a child is neglected, dependent, or delinquent, 'and is in need of the care and protection of the court.' The significance of these quoted words will be referred to later.'' . . . ''The conclusion to which we have been led by consideration of the language of the statutes is confirmed and strengthened by consideration of the general legislative purpose in the enactment of the Juvenile Court Act and its supplements and amendments, and the act commonly called the Mother's Pension Law, which was enacted by the Legislature of 1913. To say the least, the primary purpose of the juvenile court legislation was not to aid the poor. As shown by its provisions, as well as by its preamble, the broad general purpose the legislature had in view was to guard children from association and contact with crime and criminals, to subject children lacking proper parental care or guardianship to a wise care, treatment, and control that their evil tendencies may be checked and their better instincts may be strengthened, and, to that end, to clearly distinguish the powers of the courts in respect to the care, treatment, and control over the classes of children mentioned, from the powers exercised in the administration of the criminal law. In the administration of such a law, narrow and refined construction of its words, without regard to its true spirit, should not be sought for. Nor should regard for the niceties and formalities of practice and pleading be carried to such extent as to defeat, in particular cases,

the benign purpose, of the legislature. But matters which the legislature has deemed substantial in defining the jurisdiction of the court can no more safely be disregarded in the administration of such a law than they can in the administration of any other. In view of the legislation in *pari materia* to which we have alluded there is no occasion or justification for straining the language of the juvenile court legislation to reach cases like the present, very meritorious as they are . . . Doubtless, the petition here presents the truth of the case, which is that the widowed mother needs assistance in the support of these children, not that they need the care and protection of the court. It is in the highest degree desirable that they should be kept together in the home which she has provided for them. Far be it from us to assert that the legislature has not power, by a general law, to provide for rendering assistance out of the public funds in such cases. But it is for the Legislature, not the courts, to determine upon what terms the public charity of the Commonwealth shall be administered."

Allegheny County, appellant v. Pittsburgh, 281 Pa. 300.

In 1924 the Supreme Court had occasion to discuss the children designated as dependent and neglected by the juvenile court as possible charges on the poor law authorities. It was then said: "We are of opinion that neglected and dependent children are not within the contemplation of the designation 'poor' as used in our poor laws. Certainly 'neglected' does not connote 'poor' within the meaning of these statutes. A negleeted child, as all will recognize, may be far from poor. As to a 'dependent' child, it may be said practically all children are dependent. The term 'poor' as used in the law, means 'destitute, helpless and in extreme want; . . . so completely destitute of property as to require assistance from the public;' it is synonymous with 'pauper' and this means 'one so poor that he must be supported at the publie expense:' 3 Bouvier's Law Dictionary, 2631, 2539. The legislative definition of a dependent or neglected child for the purposes of the Act of April 23, 1903, P. L. 274, is 'any child who is destitute, homeless, abandoned, or dependent upon the public for support, or who has not proper parental care or guardianship.' We are not prepared to hold that under this designation a child found to be destitute and dependent upon the public for

support would not be within the purview of the poor laws . . . It is manifest that not all children found to be neglected or dependent are destitute or dependent on the public for support and, therefore, the mere finding of the court that a child is either neglected or dependent without more could not fix a poor district with responsibility for its maintenance."

Ninth Annual Report of the Municipal Court of Philadelphia, 1922, p. 13.

On the subject of dependent and neglected children the Philadelphia Municipal Court made the interesting statement that "The term *dependent children,* as used in the statistics of this report, means those who cannot be comfortably provided for by their parents and, therefore, for various reasons are partially or completely dependent upon the public for support. The term *neglected children* means those for whom the parents fail to care, so that they suffer from actual want or are demoralized. The *distinction between the two is generally due to the attitude of mind on the part of the parents.* The solution of the problem of the neglected child often means the disruption rather than the preservation of the home."

162. Q. Why is it that the definition of dependency is so much more difficult than the definition of "delinquency?"

A. Because it attempts to define deviations from standards of living and child care which have themselves not been defined, while delinquency defines deviations from standards which may in some instances be irrational, but which are at least articulated. Attempts to define dependency in terms of the unmet needs of children, such as that given by the Philadelphia Municipal Court immediately run into the difficulty of numbers of such cases in the community. It is well known that many children in the community need much more than their parents and relatives can provide. But thus far there has not been developed in Pennsylvania any political or economic philosophy upon which to build a system of subsidizing on court order or in any other public way all of the families in the community whose children are not comfortably provided for. Moreover, there is a vast net work of social organizations for extending aid from public and private sources to people in need.

163. Q. What is the volume of cases of dependent children, as compared with cases of delinquent children, brought into the juvenile courts of the State?

Eleventh Annual Report of the Municipal Court of Philadelphia, 1924, p. 8.

A. Reliable statistics for the State as a whole are not available. Scattered materials indicate that in general it is only in large urban communities that juvenile courts are active in providing care for dependent children or dispensing funds therefor. In 1924 the Philadelphia Municipal Court was reporting a rapidly growing number of dependency and neglect cases. "The number of dependency and neglect cases referred to the court as new charges and disposed of formally through court hearing during the four years 1921 to 1924 was as follows:

| | | |
|---|---|---|
| 1921 | — | 1920 |
| 1922 | — | 2056 |
| 1923 | — | 2122 |
| 1924 | — | 3080" |

P. 16.

While there were 6650 formal hearings in delinquency cases there were 5248 hearings in dependency and 1745 in neglect cases that year.

P. 53, 54.

There were 3975 different children referred to the court during the year on new charges of delinquency and 4015 referred on "new charges of dependency or neglect."

Twelfth Annual Report of the Municipal Court of Philadelphia, 1925, pp. 8, 9 and 71.

In 1925 the court reported a decrease of "new charges" of dependency disposed of formally by court hearing to 2501. These cases involved 2342 different children. The decrease was explained as due to the abandonment of the practice of making orders on the county to aid children in their own homes.

In Allegheny County in 1925 there were 1130 delinquency cases and 896 dependency and neglect cases.

In course of publication.

In a survey made in 1923-1924 by the U. S. Children's Bureau of the child welfare conditions and resources of seven Pennsylvania counties it was found that, while there was a total of 1169 cases of delinquent children before the courts there were only 171 dependency cases of which about half came from one rather large city.

164. Q. What justification is advanced for keeping dependency within the juvenile court's jurisdiction?

A. It is sometimes said that some children who come into conflict with the law and are technically charged with delinquency, are really only dependent children and thus peculiarly exposed to getting into trouble and to being brought into court. If the juvenile court's jurisdiction covers dependency they can then be classified in that category and handled as dependents rather than as delinquents.

This justification is criticised on several counts. As it has turned out, many dependent children are brought in who present no behavior problems whatever. This places the court immediately in the position of a relief giving and general child caring agency.

The attempt of a court to function in this chaotic field only adds, it is thought, another element of confusion to the problem of poverty and relief. It is also said that the performance of the court's essentially judicial functions is made much more difficult by the addition of these functions of administration which greatly interfere with the careful scientific social work which is required to accomplish any results at all with the children presenting serious behavior difficulties.

165. Q. What are the legal origins of the juvenile court's jurisdiction in dependency cases?

Flexner and Oppenheimer: The Legal Aspect of the Juvenile Court, U. S. Children's Bureau Publication, No. 99.

A. "Jurisdiction over dependent children can be traced to the common law rule which made it an offense to be a vagrant and to the old English statutes which gave to magistrates and justices of the peace the power to commit to institutions persons who were a charge upon or a danger to the community. But in indictments for vagrancy and in commitments of paupers the law operated only to protect the public, whereas jurisdiction over dependent children is given primarily on behalf of the children affected."

166. Q. Did the Court of Quarter Sessions of Pennsylvania prior to juvenile court legislation have the power to order any public authorities to support a dependent child?

A. Only when appealed to in questions involving the responsibility for the poor in disputed cases. Then they could fix that responsibility in a given case upon the proper person or public agency.

167. Q. What is the origin of the authority by which a judge of the juvenile court can now order the county commissioners to pay for a dependent child's keeping?

A. Originally the Act of 1903 granted no such power. The dispositions, therein permitted, are in all cases, a placing of responsibility for support either on some person liable for it or on some person or institution willing to receive it. "Unless otherwise ordered" further disposition of the child could be made by this designated "guardian" of which the child was to become a "ward."

Act of May 31, 1907, P. L. 331.

The first act to give the judges power to make orders on the counties was passed in 1907 and seemed to contemplate direct placement of poor children at board in families. This act reads: "Whenever hereafter any indigent or dependent child shall be committed *by any judge or other competent authority* to the care and custody of any person or family, for the purpose of maintenance and education in the home of such person or family, such child shall be conveyed to such home by the county commissioners, sheriff or other proper officer, at the expense of the proper county, and the cost of maintenance of such child shall also be paid by the proper county, but at a sum not exceeding what it would cost to maintain and educate such child in the house of refuge, or other public institution of such county: Provided, however, that if at any time the parents or other relatives of such child shall become able to pay such costs, or to refund the money already paid, the said county may apply for and obtain an order for the payment thereof, and enforce the same, in the same court, and in the same manner as is or may be provided by law for compelling the maintenance and support of deserted wives and children."

It will be noted that this act makes no reference to this function of child placement as a part of the juvenile court's jurisdiction.

Sec. 4, Act of April 23, 1903, P. L. 274.

The Juvenile Court Act as first passed provided that the court could commit any dependent, neglected, incorrigible or delinquent child to:

(1) The care of its parents, subject to the supervision of a probation officer;

(2) Some suitable institution;

(3) The care of some reputable citizen of good moral character;

(4) The care of some training school;

(5) An industrial school;

(6) Some association willing to receive it.

In either such case the court could order the parent or parents to contribute to the child's support, "such sum as the court may determine."

Sec. 5, Act of April 23, 1903, P. L. 274.

Unless specifically told not to, any association or individual to whom a dependent child was committed might place it for adoption and consent thereto or indenture it.

Sec. 6, Act of April 23, 1903, P. L. 274.

In the case of the delinquent child, commitment might be made to the care and guardianship of the probation officer who might place it free in a family home or might, if duly authorized by the court "board out the said child in some suitable family home, in case provision is made by voluntary contribution or otherwise for the payment of the board of such child, until a suitable provision may be made for the child in a home without such payment." The possibilities lying in the phrase "or otherwise" seem to have been an order on the parent.

Wolf's Case, 58 Super. Ct. 260.

The court might also commit the delinquent child to a suitable institution for delinquent children or to any society, duly incorporated for the care of delinquent or dependent children.

Act of June 1, 1911, P. L. 543.

In 1911 Section 6 of the Juvenile Court Act was amended so that for *delinquent* children committed to the probation officer for board in a family home, the court might "direct that the payment of the board of such child be made by the proper county, until a suitable provision may be made for the child in a home without such payment."

Act of May 8, 1913, P. L. 177.

Following somewhat the tack of the Act of May 31, P. L. 331, came the Act of 1913, which permits any judge to make an order on the county for the support of a dependent or neglected child committed to the care and custody of "any association, society, person or family." The act reads as follows:

"Where any neglected or dependent child is or shall be committed to the care and custody of any association, society, person, or family, by

any court, and an order for the payment of the maintenance of the child and the expense of such commitment is made upon the proper county, in pursuance of the laws of this Commonwealth, the county from which such child has been committed to the said association, society, person, or family, shall be liable to the said association, society, person, or family for the maintenance of the said child and all expenses connected therewith: Provided, That the county shall in all cases have full recourse to recover all expenses incurred in behalf of said child so committed from the parties or persons or poor district properly charged therewith under the laws of this Commonwealth."

Act of July 25, 1913, P. L. 1039.

In that same year came the further amendment of Section 6 of the Juvenile Court Act, which hitherto had referred only to the cases of delinquent children, so that its provisions came to apply to dependent, neglected and incorrigible children as well. By this it became possible for orders to be made on the county for the support of a delinquent, dependent, neglected or incorrigible child, (1) temporarily placed at board in some suitable family home by the probation officer duly authorized by the court so to place the child, or (2) committed "to a suitable institution for the care of delinquent children or to any society, duly incorporated, having as one of its objects the protection of dependent, neglected or delinquent children."

Act of May 13, 1915, P. L. 304.

In 1915 these powers of ordering the county to support and care for children were amplified through further amendment of Section 6 already twice amended. This time it was extended to include: "In any case of the commitment of a dependent, neglected, incorrigible or delinquent child, under the provisions of this section, the court committing such child may order and direct that the board and clothing of, and necessary medical and surgical attendance upon and the care of, such child, and its maintenance generally, shall be paid by the proper county, and may fix the amount which shall be paid for such board and clothing."

Act of June 12, 1919, P. L. 445.

Manual, 379.

Finally in 1919 the 1915 version of Section 6 was extended to give the court power to order the county to pay "the necessary expenses of placing or re-placing" the child committed by it.

Act of June 7, 1923, P. L. 677, No. 276.

Manual, 561, 562.

The most recent addition to the court's powers to order the county to pay for the support of children in need is in connection with crippled children. The act referring to them provides: "Crippled children whose parents or guardians fail or are financially unable to provide suitable medical and surgical aid, treatment, and education, when necessary, may with the consent of the parents or guardian of such child, be committed to a crippled children's home or orthopaedic hospital or other institution. Application for such care, treatment, and education shall first be made to the juvenile court by a parent, guardian, or some interested person. If such court is of the opinion that such child is in need of treatment and education, and finds that the parent or guardian fails to provide it, he may make an order committing the child to an institution as above specified, and shall at once forward a copy of the decree and a statement of the facts to the Department of Public Welfare, and shall provide for the child's conveyance, in charge of a suitable person, to the place designated for treatment. The expense for maintenance, treatment, conveyance, and education of such crippled child shall be first paid by the county of its residence and then may be charged to the parent or guardian, if able to pay, in whole or in part, as the court may direct. Such committance shall be temporary, and shall be only for the period necessary for the treatment of such child.

"Whenever it appears that a crippled child has been successfully treated, or that it cannot be further benefited by such treatment, the Department of Public Welfare and the committing court shall be notified, and the child shall be returned to its own people."

168. Q. How is the case of a dependent child brought into juvenile court?

Sec. 2, Act of June 28, 1923, P. L. 898, amending Sec. 2, Act of April 23, 1903, P. L. 274.

Manual, 340.

A. On petition "of any citizen, resident of the county, setting forth that a child is . . . dependent . . . and is in need of the care and protection of the court . . . "

Although the procedure is by petition to secure some form of public guardianship over the dependent child, the close working relationship of this procedure to that followed in the case of delinquent children, has resulted in

these dependent children being regarded in some plaees as the objects of some kind of prosecution. The reports of the Philadelphia Municipal Court regularly speak of "new charges" of dependency. While doubtless the attitude of the court is not aecusatory, yet this does illustrate the way in which the concepts of the criminal law still cling to the juvenile court procedure even where it is not even remotely applicable or pertinent.

169. Q. Does "any citizen, resident in the county," include the parent or other natural custodian who may appeal to the court for support of the child?

A. Yes.

170. Q. Do cases arise from this source?

Ninth Annual Report of the Municipal Court of Philadelphia, 1922, p. 125.

A. Yes. For 1922 the Philadelphia Municipal Court reported that of 1023 petitions filed in dependency eases, 601 were filed by the child's own family: father 206, mother 309, relative, 86. Soeial agencies filed 380 petitions and the remainder came from: probation officers 21, "caretakers" 18, attorneys 2 and "other" 1.

171. Q. Can sueh parent or natural custodian petition for a court order upon the county for support of the child while it remains in its own home?

A. This is an unsettled point. It will be recalled that the power to make these orders on the county commissioners began in 1907 with an act empowering "judges" so to do in the case of "indigent or dependent" children. In 1911 this power was extended and the juvenile court was empowered to make such orders under certain circumstances. At this point a case was brought into the Philadelphia Court of Quarter Sessions sitting as a juvenile court, by a woman with three small ehildren who had been deserted before the birth of the third one, by her husband.

In re Winifred McKenna, et al., 22 Pa. Dist. 207.

"Estimable people, truthful and honest, familiar with the facts, some of whom were known to the court personally, and in all of whose reliability the eourt had the greatest faith, gave testimony of the brave and noble efforts that the affectionate mother had made to keep a home about her children, despite the penury

that beset her upon every side, so as to avoid commitment of them to the care of some formal charity.''

Reluctantly in February of 1913 that court held that it could not make such an order. It was there established that the Court of Quarter Sessions is without power to direct the application of public funds, contributed by the tax payers, to private charity, no matter how worthy, unless specifically directed or permitted by the Legislature to do so.

The Act of June 1, 1911, P. L. 543, had been cited by the petitioner as possible authority for the court to make an order for support of dependent children in their own homes. Rather curiously, the fact that this act referred only to the dispositions which could be made of *delinquent* children is not a matter of comment by either side or by the judge in writing his opinion. Instead he held that such an order could not be made for other reasons. His opinion is as follows:

In re Winifred McKenna, et al., 22 Pa. Dist. 207.

''By the Act of June 1, 1911, P. L. 543, there was an amendment to the said Act of 1903, as to the sixth section, by inserting the words, 'Said probation officer may direct the payment of the board of such child to be made by the proper county until a suitable provision shall be made for such child in a home without such payment.'

''Thus, the latter act, it will be seen, contemplates only that the child shall be cared for temporarily by such payment until suitable provision shall be made where there is to be no payment. This qualification and meaning, it would seem, is very plain.

''There is no power whatsoever granted to the court to permit children to remain with their parents and compel the county to pay for their support. Such action upon the part of the court would be in the nature of a permanent order, without due regard to the qualification as to transiency, which qualification is plainly indicated by the use of the words 'until a suitable provision shall be made for such child in a home without such payment.' ''

It is probable that although the judge did not mention it, the fact that Section 6 of the Juvenile Court Act, as amended in 1911, referred only to delinquent children led to its further amendment by the 1913 General As-

sembly, a few months later, so that it was made to cover the dependent, neglected and incorrigible as well.

Wolf's Case, 58 Super. Ct. 260.

The next case of this character came up in the Philadelphia Municipal Court. In March, 1914, that court committed the five children—of whom the oldest was nine years of age—of a widow "to the care and custody of their mother to remain with her in her home under the eare and supervision of the chief probation officer of the juvenile court," and an order was made on the county commissioners "to the chief probation officer for the support of said children of $2.00 for each child per week, until the further order of the court." The county commissioners petitioned that the order be vacated and the court dismsised their petition. This decision was immediately appealed by the county commissioners to the Superior Court. The case was argued in May, 1914, and the decision handed down in July of that year. In this it was held that "A review of the pertinent provisions of the Act of 1903 and its amendments prior to 1913, having due regard to the main objeet and intent of the statute, leads to the conclusion that they do not confer authority for making an order on the county commissioners for the payment of a given sum per week for the support of a dependent child remaining in the home of its mother." It was further held that neither of the two acts, that of May 8, 1913, P. L. 177, and of July 25, 1913, P. L. 1039, conferred such power.

In this widow's petition it had been set forth that "the mother would like to have assistance to help support the said children." Coneerning this the Superior Court said: "Doubtless, the petition here presents the truth of the case which is that the widowed mother needs assistance in the support of these children, not that they need the care and protection of the eourt. It is in the highest degree desirable that they should be kept together in the home which she has provided for them. Far be it from us to assert that the Legislature has not power, by a general law, to provide for rendering assistance out of the public funds in such cases. But it is for the Legislature, not the courts, to determine upon what terms the public charity of the Commonwealth shall be administered."

In 1915 the wording of Section 6 of the Juve-

nile Court Act was revised so that in any kind of commitment of a dependent, neglected, incorrigible or delinquent child, whether to the probation officer for return to its home or for placement elsewhere or on commitment to an institution or incorporated agency the court may order the county to pay for its various expenses and "its maintenance generally." So far as is known this enactment has not been construed by the higher courts.

Eleventh Annual Report of the Municipal Court of Philadelphia, 1924, pp. 25-27.

In any event the Philadelphia Municipal Court has continued to make such orders. It refers to these families as "County Allowance Cases." In 1924 the court apparently had granted this aid to 511 families with an amount "payable" to them of approximately $345,000. The 1924 report of this court contains the interesting statement that "In January, 1925, the county commissioners petitioned this court to grant no more orders of this nature and to cancel all the orders already issued on the grounds that the Superior Court had rendered a decision that county or municipal judges have no authority to issue support orders in cases where funds have been granted for that purpose by the Legislature."

The experience of this court in dealing with dependent children well illustrates the difficulties and complexities of attempting to administer funds for the relief of dependent children through a branch of the judiciary. The assistance of children in distress almost invariably means the assistance of families in distress. The administration of such assistance is an administrative task which involves the development of rules and regulations carefully worked out, painstakingly applied, stable in their nature and related to the whole machinery in the community for coping with the problems of poverty which arise from many complicated causes. Any public or private agency which enters this field must reckon with one of the most difficult and baffling forms of social amelioration. It is really not to be wondered at, that neither laws nor court decisions nor administrative practice has developed a clear and orderly program for the discharge of this function by the court.

172. Q. How does the standard Juvenile Court Law define the terms "dependent child" and empower the court to provide for him?

A Standard Juvenile Court Law published by the National Probation Association, Inc., 1926, p. 10.

A. The definition is set apart from that of "neglected child" and is as follows:

"The words 'dependent child' include:

(a) A child who is homeless or destitute or without proper support, but who is not a neglected child as defined above;

(b) A child who lacks proper care by reason of the mental or physical condition of the parent, guardian, or custodian.

P. 22.

It is further provided that: "Whenever a child is committed by the court to custody other than that of its parent and no provision is otherwise made by law for the support of such child, compensation for the care of such child, when approved by order of the court, shall be a charge upon the county or the appropriate subdivision thereof. But the court may, after giving the parent a reasonable opportunity to be heard, adjudge that such parent shall pay in such manner as the court may direct such sum as will cover in whole or in part the support of such child, and if such parent shall wilfully fail or refuse to pay such sum he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence."

It will be noted that this provision attempts to clarify,

(1) The problem of distinguishing between the neglected and the dependent child, and

(2) The circumstances under which the court can order the county to provide for a child's maintenance.

173. Q. If the order for the child's support can be made only on condition that the child is committed for care away from its parent, does that not operate to encourage separation and the expenditure of more money than would be required to assist the child in his own home?

A. Yes, it has that tendency especially if the juvenile court has unlimited financial resources and there is inadequate provision for assistance to families. In the care of dependent children the juvenile court is on the horns of the dilemma of either providing family assistance, which is a difficult administrative task which has little relation to judicial problems, or of setting up a machinery which operates to encourage separa-

tion of families coupled with the development of a multitude of private child caring agencies which are based on all kinds of sectarian and special interests but which seek to secure public funds to support their programs.

174. Q. Is there any difference in Pennsylvania in the exercise of the juvenile court's jurisdiction in cases of dependent children from its exercise in delinquent cases?

A. Not in the processes of handling of the case up to the point of making a disposition; that is, the child is a ward of the court from the time of the filing of the petition and subject to the court's orders. It may be detained in the house of detention where the management is under no legal compulsion to keep it apart from the delinquent or incorrigible children, though that is the practice in some of the houses of detention. It may also be placed on the preliminary order of the court, in the custody of "any association having for one of its objects the care of delinquent or neglected children." The probation officer may be called upon to make an investigation, and the parents or other custodians summoned to the hearing.

175. Q. What dispositions may the court make of a dependent child?

A. The same as those of delinquent and incorrigible children. (See Questions 61 to 66.)

176. Q. Does the law provide any additional methods of disposing of a dependent child's case?

Sec. 5, Act of April 23, 1903, P. L. 274.

Manual, 76.

A. Yes, a very sweeping provision of the original Juvenile Court Act sets forth: "In any case where the court shall award a dependent child to the care of any association or individual, in accordance with the provisions of this act, the child shall, unless otherwise ordered, become a ward, and be subject to the guardianship of the association or individual to whose care it is committed. Such association or individual shall have authority to place such child in a family home, with or without indenture, and may be made party to any proceedings for the legal adoption of the child, and may, by its or his attorney or agent, appear in any court where such proceedings are pending and assent to such adoption. And such assent shall be

sufficient to authorize the court to enter the proper order or decree of adoption. Such guardianship shall not include the guardianship of any estate of the child."

177. Q. Have the rights thus conferred upon a child caring agency to consent to an adoption ever been tested in the courts?

Legal Adoption in Pennsylvania, published by the Children's Commission, 1924; First Report of the Children's Commission to the General Assembly, 1925; Act of April 4, 1925, P. L. 127.

A. No, they probably would not be sustained as against the claims of a parent prior to 1925 and with the passage of the Adoption Act of 1925, this section of the Juvenile Court Act was probably repealed by implication. The trend of adoption legislation and its construction by the courts is toward exercising great care to see that a child's parents are not deprived of status or their rights of consent, especially if their only fault is poverty or the inability, either temporary or permanent, to support the child. Under the broad definition of "dependent child" in the Juvenile Court Acts it could have happened prior to 1925 that under this section a parent, justifiably unable to support his child could have it taken away from him in adoption without notice and without his consent.

178. Q. How do the courts actually dispose of these dependency cases?

Unpublished Statistical Report of the Allegheny County Court.

A. In Allegheny County in 1925 the 896 dependency cases were disposed of as follows:

| | Total | Boys | Girls |
|---|---|---|---|
| Total | 896 | 483 | 413 |
| Petition dismissed | 32 | 17 | 15 |
| Returned to family | 172 | 98 | 74 |
| Committed to relatives | 106 | 61 | 45 |
| Committed directly to foster homes | 49 | 20 | 29 |
| Committed to the Allegheny County Home Finding Department | 411 | 230 | 181 |
| Committed to all types of institutions | 93 | 42 | 51 |
| Other dispositions | 33 | 15 | 18 |

Eleventh Annual Report of the Municipal Court of Philadelphia, 1924, pp. 10, 22, 29.

The Philadelphia Municipal Court reports for 1924 that it had 2334 "new charges" in dependency cases. The dispositions of these cases were as follows:

| | | Percentage |
|---|---|---|
| Dismissed, discharged, withdrawn, referred to other courts, continued until further notice, etc. | | 7 |
| Adjudged in need of the care and protection of the court | | 93 |
| Probationed or paroled | 9 | |
| Committed to the care of individuals | 3 | |
| Committed to child caring agencies | 48 | |
| Committed to institutions | 33 | |

179. Q. What is the maximum age of a child at which the court may order its board to be paid by the county?

Commonwealth v. Murray, 26 Pa. Dist. 489.

A. An order for the support of a child under sixteen years continues in full force until the child is twenty-one, unless the child is discharged by the court on motion.

180. Q. What is the maximum age at which a child can be aided by the Mothers' Assistance Fund?

Sec. 11, Act of July 10, 1919, P. L. 893.

Manual, 330.

A. At the age of sixteen, the allowance must be cut off.

181. Q. What is the maximum age at which an able bodied, normal child is eligible for poor relief?

Sec. 10, Act of May 14, 1925, P. L. 762.

A. For the purposes of poor relief a person ceases to be a dependent child whenever he can secure a working certificate. "A poor person" according to the poor law, is one who is *unable* to maintain himself or those dependent upon him.

182. Q. What is the maximum age of an able bodied, normal child for whose support a parent can be held liable?

Act of July 12, 1919, P. L. 939.

Manual, 26, 27.

A. For the purposes of poor law administration, sixteen, unless the child "by reason of infirmity" is incapable of supporting itself; in that case this responsibility extends until the child reaches the age of twenty-one.

In other cases the parental duty of support and education seems to depend on the parents' financial ability.

Commonwealth v. Breth, 44 Pa. Co. 56.

It was said by Judge Woodward, in 1859: "There is no duty more clear and imperative

than that of a father to support his children during their minority, and though we have no statute enforcing it, except in case of pauperism, I hold it to be a legal obligation he is absolutely bound to provide reasonably for their maintenance and education.'' (See Question 198.)

183. Q. If an order is made on the county for the support of a dependent child committed away from its own family for care, to whom may it be paid?

Sec. 1, Act of June 12, 1919, P. L. 445, amending Sec. 6, Act of April 23, 1903, P. L. 274.

Manual, 379.

Sec. 1, Act of May 31, 1907, P. L. 331.

Manual, 395.

Sec. 1, Act of May 8, 1913, P. L. 177.

Manual, 394.

A. Under the amended Juvenile Court Act it may be paid to the probation officer, to the temporary custodian, to an institution and to an incorporated agency.

Under the Act of 1907 the court is apparently at liberty to make orders on the county payable to ''any person or family'' and under the Act of 1913 to ''any association, society, person or family.''

The requirement that agencies or institutions must be ''duly incorporated'' before they may receive county funds for the board of a child appears only in the case of agencies mentioned in the Act of June 12, 1919, P. L. 445. This seems to be nullified by the board designations in the Act of May 8, 1913, P. L. 177.

184. Q. Cannot the juvenile court commit a child to the guardians or overseers of the poor upon its being shown that the child is dependent on the public for its support for the proper care and disposition?

Sec. 12, Act of June 11, 1879, P L. 142.

Manual, 314.

A. Yes, the courts have had that recourse specifically since 1879. It was then provided that various acts of omission and commission on the part of the parent or custodian toward the child shall be misdemeanors. This act provides that: ''Whenever the parents or proper guardian of any infant unable to support itself, have been convicted of any of the offenses enumerated in this act, or are dead or cannot be found, and there is no other person legally responsible for the maintenance and support of such child, willing to assume such support, or to be found within the county, any magistrate or court of record of the county in which such child may be found, may commit such child to the care and custody of the guardians of the poor of the said county, but nothing herein contained shall

exempt any person from the duty of maintaining and supporting such child as now imposed by law."

Petition of the Pennsylvania S. P. C. C., 22 Pa. Dist. 347.

A case invoking this act was heard in 1913 in the Philadelphia Court of Quarter Sessions sitting as a juvenile court. A boy whose father had deserted him and had gone to California and whose mother "by reason of her habits" was unable to care for him, had come into the care of the S. P. C. C., which reported that it was improbable that it would be able to find a home for him. It therefore asked that he be committed to the guardians of the poor, *i. e.* the Department of Health and Charities. That department accepted the responsibility immediately and the court committed the child to it. This step was regarded with much satisfaction by the court which said: "The admission of the responsibility of the department will, therefore, very much simplify the practice in these cases, as the child can, where the conditions require, be directly committed to the department.

" . . . the recognition by the department that such commitments of children to the Guardians of the Poor of Philadelphia as were contemplated by the provisions of the Act of June 11, 1879, P. L. 142, are now within the province of the Department of Public Health and Charities of Philadelphia, will relieve the petitioning society from conditions which heretofore have worked a great injustice. Instead of committing such children directly to the Department of Public Health and Charities, it has been the practice of the court in many cases to commit the child primarily to the society and then make an order, either upon the parents of the child or upon the county commissioners, for the payment of the sum of $1.87. In many of these cases it appears, the amount of the order, either upon the parents or upon the county, was not sufficient to pay the actual cost of the board and support of the child by the society, either in a home obtained for the child or otherwise, so that the deficiency had to come from the treasury of the society, thus making a great draught upon its revenues, when, as it is now conceded, the commitment should, in the first place, have been made directly to the Department of Public Health and Charities, which department would be responsible, under the law, for the care and support of such child."

The court was so impressed with the importance of this method of providing for dependent children that it formulated a rule of court regarding the presentation of such petitions: "In default of a formal rule of practice on the subject, the sitting judge is of the opinion that any petition presented, praying for a commitment to the Department of Public Health and Charities, should contain specifically in detail the particular offense of which the parent or the parents of the child had been convicted—the place, court and date of such conviction—certificate from the Bureau of Registration of Births, Marriages and Deaths of the death of the parent, and in the case of an averment that the parents cannot be found, a statement of the last known place of residence of such parents, and what efforts had been made and by whom to ascertain the present whereabouts of such parents. There should also be an affirmative statement, based upon actual investigation, that there is not some other person than the parents legally responsible for the maintenance and support of such child."

185. Q. If the guardian of a minor's estate fails to provide for it and the child is taken into juvenile court as a dependent or neglected child, can the juvenile court order the guardian to pay for the child's maintenance?

Colucci Minor's Estate, 3 Dist. & Co. 694.

A. No, the guardian is subject only to the orders of the Orphans' Court.

186. Q. What is the proper measure of redress if the guardian refuses to support the child?

Call v. Ward, 4 W. & S. 118.

A. "Application should be made to the Orphans' Court for a change of guardian or for the issuance of the necessary orders or authorization to provide for the child; or the infant may himself purchase necessaries; or if of such a tender age that he cannot contract himself, a third person may supply his wants."

187. Q. Under the circumstances described in the question above, who is responsible for the indebtedness thus incurred by the infant or in its behalf?

A. The infant himself.

188. Q. If necessaries are furnished on the order of the juvenile court, and an order is made on the county to reimburse the person or agency to whose care the child is committed, can the county file a claim to be reimbursed from the child's estate?

Colucci's Estate, 83 Super. Ct. 224.

A. Yes, "the proper time and place for the county to present its claim was in the proceedings to distribute the estate of the minors."

189. Q. Has it ever been contended that children with property should be supported by the county?

Krause's Estate, 26 Pa. Dist. 104.

A. Yes. In a case in 1916 it appeared that about a year before, three children had been committed by the juvenile court to a child caring agency with a county order of $3.50 per week each for their maintenance. This decree was regularly complied with. When it came to the attention of the county commissioners that these children had become possessed of an estate they applied to the Orphans' Court for reimbursement. "To this an answer was filed setting forth that the guardian desires to retain the fund in his hands in order to enable him in the future to expend it for the education of the children and in the support of one of them who is a cripple."

The Orphans' Court held that such a "defense" on the part of the guardian could not be maintained. "It is fundamental that the county is not responsible unless the minors are dependent. And while it may be for the welfare of the children to conserve their estates while the public supports them, such was not the intention of the legislation on this subject."

190. Q. Under what circumstances may the treatment of a child by its parent be scrutinized by a court?

A. For alleged cruelty, neglect and improper guardianship.

191. Q. What constitutes cruel treatment of a child?

A. At common law a parent or other custodian was liable for prosecution for assault and battery if he maliciously injured his child. The relation of this to corporal punishment by a parent is discussed in a case which came before the

Common Pleas Court of Philadelphia County in the middle of the nineteenth century.

Commonwealth v. Seed and Bryant, 5 Clark, 78.

"The right of a parent to correct his minor child, is understood. It is one of the first rules in our domestic relations; and yet it is equally clear that the parent may be held responsible for the cruel or barbarous treatment of his child. The school teacher, while a child is placed by the parent or guardian in school, or under charge of the teacher, is in *loco parentis,* and can exercise the same authority as the parent, and is responsible in the same manner, and the rules of law which are applicable to the parental control, are also to be applied to the school teacher.

"An able and accomplished American law writer, has now given us a plain and intelligent rule, which I will quote at length. When writing upon this subject, he says:

" 'The parent has a right to govern his minor child, and as incident to this, he must have power to correct him. The maximum is, that he has power to chastise him moderately. The exercise of this power must be, in a great measure, discretionary. He may so chastise his child as to be liable in an action by the child against him for a battery. The child has rights which the law will protect against the brutality of a barbarous parent. I apprehend, however, it is a point of some difficulty to determine, with exact precision, when a parent has exceeded the bounds of moderation. That correction which will be considered by some triers as unreasonable, will be viewed by others as perfectly reasonable. What may be considered by some a venial folly, to which none, or very little correction ought to be applied, by others will be considered as an offense that requires very severe treatment. The parent is bound to correct a child so as to prevent him from becoming the victim of vicious habits, and thereby proving a nuisance to the community. The true ground on which this ought to be placed, I apprehend is, that the parent ought to be considered as acting in a judicial capacity when he corrects, and, of course, not liable for errors of opinion. And although the punishment should appear to the triers to be unreasonably severe, and in no measure proportioned to the offense, yet if it should also appear that the parent acted conscientiously and from motives

of duty, no verdict ought to be found against him.

" 'But when the punishment is, in their opinion, thus unreasonable, and it appears that the parent acted *malo animo,* from wicked motives, under the influence of an unsocial heart, he ought to be liable to damages. For error of opinion he ought to be excused, but for malice of heart he must not be shielded from the just claims of the child. Whether there was malice may be collected from the circumstances attending the punishment. The instrument used, the time when, the place where, the temper of heart exhibited at the time, may all unite in demonstrating what the motives were which influenced the parent. These observations are equally applicable to the case of a school master, or to any one who acts in *loco parentis.*' Reeves' Domestic Relations 288; 1 Blacks, Com. 58.

"To the doctrine here laid down we entirely assent, for it is unquestionably the law, based upon the soundest principles which control civil society.

"To render a parent liable to prosecution by his minor child, he must be governed by motives of malice or wickedness. For a mere error of judgment, influenced, perhaps, by fond parental love for the future prosperity and happiness of his child, he cannot be held legally liable. The law does not permit a court to invade the sanctuary of the domestic circle and usurp the parental authority in every family, because we may think the punishment is severe. It is only when, from the surrounding facts and circumstances of the case there is strong reason to believe that the parent has been actuated by bad and malevolent motives, using his legal parental authority for the gratification of a mind bent on mischief, that the law has given the court the right to interpose for the protection and safety of the child."

Sec. 90, Act of March 31, 1860, P. L. 382.

Manual, 604.

The Code of 1860 of penal offenses declares, "If . . . any person having the legal care and control of any infant . . . shall unlawfully and maliciously assault such . . . infant, whereby his life shall be endangered, or his health shall have been, or shall be likely to be permanently injured. . . . such . . . person, on being thereof convicted, shall be guilty of a misdemeanor, and be sentenced to pay a fine, not exceeding five hundred dollars or to undergo an imprison-

ment, not exceeding two years, or both, or either, at the discretion of the court."

Sec. 1, Act of June 11, 1879, P. L. 142.

Manual, 602.

In 1879 a new act was passed which grouped a number of offenses against children and provided penalties. In that cruelty is named but not really defined. It states that "Any person whatsoever who shall cruelly ill-treat, abuse or inflict unnecessary cruel punishment upon any infant or minor child" shall be guilty of a misdemeanor and on conviction thereof "Before any justice of the peace, magistrate or court of record, shall be fined . . . not less than ten dollars nor more than fifty dollars for each offense."

It might be inferred from the omission in this second act of the severe criteria stated in the Act of 1860, and also from the provision for a much smaller fine and less formal procedure, that it was aimed at the control of a less serious kind of ill-treatment than was the first act.

Commonwealth v. Mountain, 68 Super. Ct. 100.

It has been held, however, that the Legislature did not have the power in 1879 to provide for a summary proceeding against what in 1860 and at common law, was an indictable offense. This would seem to indentify the offense named in the two acts. In the case in which this decision was rendered, a school teacher in 1913 had been prosecuted and a justice of the peace had convicted her of inflicting "unnecessary cruel punishment" on a sixteen-year-old boy. She appealed to the Court of Common Pleas on a writ to certiorari. The prosecution moved to quash this writ which was done. It was from this order of the Court of Common Pleas that the case was appealed by the defendant to the Superior Court.

In 1917 an opinion by that court was handed down. It was therein said: "From that order this appeal was taken. It was set forth in the petition for the writ that the offense charged in the complaint tried by the magistrate was a misdemeanor of which the magistrate had not jurisdiction and which was triable exclusively in the Court of Quarter Sessions; and the question for our consideration is whether the charge against the defendant was within the jurisdiction of the magistrate. The Act of 1879 under which the case proceeded defines numerous offenses all of which are declared to be misdemeanors, one of which is the inflicting unnecessary cruel punishment upon any infant or minor child, and it is this particular provision on

which the prosecution was instituted. The position taken by the appellant is that the act charged was a misdemeanor at common law and under the Crimes Act of 1860 that it was an assault and battery, and triable only in the Court of Quarter Sessions before a jury of twelve. If the statute was intended to cover the case of a teacher who unreasonably punished a pupil, it merely re-enacted the prohibition against assault and battery, for the law is that a teacher who unreasonably punishes a pupil is guilty of that offense. In so far as it is legislation relating to assault and battery it prescribes a new form of trial without jury for an offense which is not only a misdemeanor at common law and under the Act of 1860, but is expressly declared to be a misdemeanor in the Act of 1879. The Declaration of Rights provides that trial by jury shall be as heretofore, and the right thereof remain inviolate. The act of which the appellant was accused was indictable and triable in the Court of Quarter Sessions at the time of the founding of the Commonwealth and under all of our constitutions. The change of the name of the offense does not affect the constitutional right of the accused to a trial by jury. There can be no doubt that prior to the adoption of the Act of 1879 the defendant could have been indicted for assault and battery from the facts alleged in the complaint against her, and on such a charge she would have been entitled to a trial by a jury of twelve men. This right could not be taken away by a statute vesting jurisdiction in a justice of the peace to try and sentence persons so accused. The subject is well considered in an opinion by Judge Trunkey in Com. v. Saal, 10 Philadelphia Rep. 496. There is no authority in the Legislature to prescribe a different mode of trial without the consent of the accused. It might well be contended that if the offense charged is new to the law of the Commonwealth, it is still an indictable offense because a misdemeanor. Misdemeanors comprehend all indictable offenses which do not amount to felonies. When, therefore, the Legislature declares an act a misdemeanor, it says in effect that such an act is an indictable offense: Son v. The People, 12 Wend. 344; State v. Hunter, 67 Ala. 81. But it is unnecessary to dispose of the case on this view of it. We think it clear that so much of the statute as may be

applicable to the case of a teacher who unreasonably punishes a pupil is a re-enactment of existing law, which from the foundation of the Commonwealth has declared the offense to be misdemeanor triable before a jury of twelve."

These two laws are referred to in the report of the Crimes Survey Committee of the Philadelphia Law Association, page 14, as "one of the most curious illustrations of a statutory provision of two forms of proceeding for the same offense."

192. Q. What disposition can be made of the child whose custodian has been convicted of cruelty?

Secs. 7 and 9, Act of June 11, 1879, P. L. 142.

Manual, 95, 552.

A. The Penal Code of 1860 made no provision for such disposition but the Act of 1879 provided that on conviction of the parent or custodian of any of the various offenses against the child named therein, any person might apply to the Orphans' Court for the appointment of a proper guardian of the person of such minor; or upon the conviction of the parent or custodian "of an assault, or an assault and battery upon such child" or of any of the other offenses named therein, "it shall be lawful for the justice of the peace, magistrate or court before whom such conviction has taken place, or where the parents or proper guardians of any child cannot be found, it shall be lawful for any magistrate or court to commit such child to the care and custody" of a "duly authorized or incorporated society to protect children from cruelty;" "and such society shall thereupon have all the rights of a guardian of the person of such child, but such society may at any time apply to the Orphans' Court of the proper county for the appointment of a guardian of the person, or the commitment of such child to an asylum or a home for children."

Besides appointing a guardian the Orphans' Court was given power to commit the child to a child caring institution, to order the parent to pay a reasonable sum toward the child's maintenance and to remand the child back to the parent, "subject . . . to the obligation of any indentures or legal engagements already entered into on behalf of said minor by his or her guardian" and on condition that the court was satisfied that the parent had become a fit person to resume custody.

Secs. 1 and 4, Act of June 8, 1893, P. L. 399.

In 1893 it was provided by law that any duly incorporated society for the protection of children from cruelty or child placing society, might receive into its custody, minors, committed by a justice of the peace, magistrate or court of record, upon complaint and due proof made "that the parents of such minor by reason of vagrancy, incorrigible or vicious conduct, criminal offense, moral depravity or cruelty, are unfit to have the training or control of such minor." Upon making such a commitment the magistrate is required to notify the district attorney who in turn is to report the matter to a Quarter Sessions judge, who is to examine the papers and "endorse thereon an order for the detention of the said minor by the said society, or if he shall be of the opinion that the said minor has been wrongfully committed, he shall endorse upon the commitment an order for the discharge of the said minor."

193. Q. Are these provisions for the disposition of children under the Act of June 11, 1879, P. L. 142, and the Act of June 8, 1893, P. L. 399, still in full effect?

Act of April 23, 1903, P. L. 274.

A. No. It was held in 1907 by a lower court that the Juvenile Court Act supersedes these acts in so far as such children were under sixteen years of age and were "*dependent*" as defined by the Juvenile Court Act. "This Act of 1903," said this court, "as to the jurisdiction of the court, its powers and how they are to be exercised, is so complete and so fully covers every condition intended to be remedied by previous legislation that we are persuaded it was intended to supersede such previous legislation, so far as the disposition, care, custody and control of the dependent child is concerned so that the court . . . would have full and complete jurisdiction in the premises. This interpretation of the law will tend to uniformity, always to be desired, and will be in harmony with the Act of June 8, 1893, which provided for a review of the substance of the testimony given before the justice of the peace or magistrate by the court before an order for the detention of a child or its commission to a society could be made."

Commonwealth ex rel. Diehl v. The Pennsylvania Society to Protect Children from Cruelty, 18 Pa. Dist. 19.

194. Q. Can a parent or other person be prosecuted in the juvenile court for cruelty to a child?

A. No; that court's jurisdiction does not include the criminal prosecution of adults for cruelty. It is only on a charge of contempt of court when a parent or other custodian neglects or refuses to comply with a court order or decree that punishment can be imposed on an adult by a juvenile court judge.

195. Q. Can the child under sixteen be removed from the parent's custody and control by the juvenile court on charges of cruelty against the parents?

Eleventh Annual Report of the Municipal Court of Philadelphia, 1924, p. 18.

A. Yes, such child is deemed not to have "proper parental care and guardianship." In 1924 the cases of 48 children representing 29 families were referred to the juvenile court for "abuse or cruel treatment."

196. Q. Is it cruelty for a parent to refuse permission for a surgical operation on a child?

In re Tony Tuttendario, 21 Pa. Dist. 561.

A. No. It was said in 1912 by a well known Philadelphia judge: "This legislation during the last half century shows the anxious care with which the general assembly has from time to time considered the subject. It shows, too, that the natural right of parents to the care and custody of their children has been abridged only in cases where they have been guilty of inflicting physical or moral injury upon their offspring with malicious intent. It is this malicious intent which stamps the offense as cruelty in the law.

"The case before us is of an essentially different character. The parents here are charged with allowing their unreasonable apprehension of injury to their child to outweigh the reasonable judgment of professional experts that the danger, whatever it is, should be incurred. There is here no question of legal cruelty or malice. On the contrary, it is averred that the unreasonable kindliness of the parents will produce results quite as harmful as if their motives were malicious.

"We are therefore asked to supersede the child's natural guardians on the sole ground that their judgment is impaired by natural love and affection, and that we should substitute for them a humane society whose judgment is untainted by such emotions.

"We see no warrant in the statutes for granting this request. We have not yet adopted as a public policy the Spartan rule that children belong, not to their parents, but to the State. As the law stands, the parents forfeit their natural right of guardianship only in cases where they have shown their unfitness by reason of moral depravity. Even if the law had advanced so far as to consider defective judgment of parents in a critical case a good reason for depriving them of their guardianship, we would not be prepared to say that a clear case of defective judgment has been here made out. The science of medicine and surgery, notwithstanding its enormous advances, has not yet been able to insure an absolutely correct diagnosis in all cases, and still less an absolutely correct prognosis. There is always a residuum of the unknown, and it is this unknown residuum which scientists, by a necessary law for the development of science, disregard, but which parents, in their natural love for their children, regard with apprehension and terror. Cases are not unknown in which patients, apparently in defiance of logical reasoning, die within a few days after having been successfully operated on. Scientifically considered, such catastrophes merely establish the high average of successful operations and demonstrate the average safety of the patients who undergo them. The law of average, however, is of no benefit to the exceptional individual who succumbs. For him there is no longer a percentage of chances. His loss is total.

"It is this contingency which every adult person weighs whenever a serious operation is to be performed, and no one has ever questioned his legal right to decide the question for himself. When, however, infants are concerned, the choice must be exercised by their guardians. In the case before us, the parents fear that the operation will result in their child's death. There is ever present to their minds the fact that of ten children born to them seven died at an early age. It may be neither absurd nor illogical to argue from this that there is an inherent constitutional weakness in the family which increases the peril of a serious operation and tends to put the patient in the class of those who succumb. At all events, such a conclusion is not so patently wrong that a court would or ought to interfere with it.

"Having regard to all these considerations and to the fact that the child's present condition involves no danger to its life, and that, even if uncured, he is still capable of a reasonable amount of activity in all ordinary affairs, we do not think that this is a case in which we can displace the natural guardians on the ground of cruelty."

197. Q. What is "neglect" of a child by its parent or custodian within the meaning of the Juvenile Court Act?

A. It will be recalled that the definition of "dependent child" and "neglected child" was one "who is destitute, homeless, abandoned, or dependent upon the public for support or who has not proper parental care and guardianship." Of all of these descriptive terms, only abandonment carries the implication of wilful neglect on the part of the parent or custodian. Improper care and guardianship may result from depravity of the parent but it may be and often is the result of necessity of the parent's earning a livelihood or of sickness or other misfortune. It would seem that so far as "neglect" is concerned, the term itself means as much or more than the terms which are used to define it.

198. Q. Are abandonment and neglect elsewhere defined in the statutes?

Sec. 45, Act of March 31, 1860. P. L. 382.

Manual, 600.

A. Yes, in the Code of 1860 of penal offenses, abandonment is defined as follows:

"If the father or mother of any child, under the age of seven years, or any person to whom such child (shall) have been confided, shall expose such child in any highway, street, field, house, outhouse or other place, with intent to wholly abandon it, such person shall be guilty of a misdemeanor, and upon conviction thereof, be sentenced to an imprisonment, not exceeding twelve months, and to pay a fine, not exceeding one hundred dollars."

Sec. 90, Act of March 31, 1860, P. L. 382.

"Neglect" appears in that act as follows: "If any . . . person having legal care and control of any infant, being legally liable to provide for such . . . infant necessary food, clothing or lodging, and shall wilfully, and without lawful excuse, refuse or neglect to provide the same, . . . such . . . person, on being thereof convicted, shall be guilty of a mis-

demeanor, and be sentenced to pay a fine not exceeding five hundred dollars, or to undergo an imprisonment not exceeding two years, or both, or either, at the discretion of the court."

Sec. 1, Act of June 11, 1879, P. L. 142.

In 1879 abandonment and neglect were coupled together as co-ordinate offenses as follows: "Any person having the care, custody and control of any minor child, who shall wilfully abandon or neglect the same, shall be guilty of a misdemeanor, and, upon conviction thereof before any justice of the peace, magistrate or court of record, shall be fined by such justice, magistrate or court of record, not less than ten dollars nor more than fifty dollars for each offense."

Sec. 1, Act of May 29, 1907, P. L. 318.

Manual, 601.

In 1907 abandonment and wilful neglect to provide are further defined. The act then passed states: "A parent or other person charged with the care and custody, for nurture or education, of a child under the age of sixteen years, who abandons the child in destitute circumstances, and wilfully omits to furnish necessary and proper food, clothing, or shelter for such child, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding two years, or both or either, at the discretion of the court. In case a fine is imposed, the same may be applied, in the discretion of the court, to the support of such child. Proof of the abandonment of such child in destitute circumstances, and omission to furnish necessary and proper food, clothing, or shelter, shall be *prima facie* evidence that such omission was wilful."

A charge of neglect under the Act of 1879 was construed and fully discussed in an Allegheny County case in 1892 as follows:

Commonwealth v. Stewart, 2 Pa. Dist. 43.

"The undisputed evidence was that the defendant is the father of these children, two boys, aged twelve and eight, and a girl aged ten. For several years the mother had been in delicate health, and finally her mind was so impaired that, in June, 1891, she was sent to an asylum, where she still is. After the mother's removal the defendant rented four rooms, and has since lived there with his children. He is engaged in the grocery business, a short distance from this place. His business occupied him from early morning until about nine o'clock at night. No provision was made for the care

of the children during the day and none for the care of the house, except such as the defendant himself could give, with the assistance of the little girl. He also gave such attention to their clothing as they received. The washing was taken out to a neighbor. She was not called to testify as to what was done in this respect. For food the children went to the store for breakfast and supper, where he made tea and gave them such food as could be provided in the store. They were sent to a hotel in the neighborhood for dinner, for which he paid fifteen cents for each child. He for himself was furnished with dinner and supper in the store by a neighbor. This was the evidence as shown by the defendant.

"On part of the prosecution it was shown by almost a dozen witnesses that the children, and especially the boys, were permitted to run the streets at all hours of the day, and often late at night, and that they were not properly clothed, their clothing being dirty and ragged, and often not sufficient to cover their nakedness. In the fall, upon complaint made by the officers of the Humane Society, he manifested indifference, merely saying that he did the best he could. No apparent effort was made to improve their condition. It was shown that both boys were a number of times out all night. The smallest one was found on two occasions sleeping under doorsteps, and the oldest one several times in a cellar, and shortly before the information in this case was made, in February, 1891, was away from home four or five days and nights in succession. When notified by a neighbor, the defendant said he could do nothing. The witness who testified to this was called by the defendant, and said that the child came to her house early in the morning, appearing to be almost frozen and starved. When the defendant did nothing she notified an uncle of the boy, who found him and took him home, and had kept him until the time of the trial.

"The only excuse offered by defendant was that the boys ran away from school, and he could not keep them at home.

"The only contradictory evidence was that of one or two neighbors who said they frequently saw the children about the store, and they seemed as well clothed as the other children of the neighborhood.

"The evidence established beyond reasonable doubt that these children were not properly clothed; that they were permitted to run at large; and that the boys frequently slept out all night, and in one instance the oldest boy had been out for four or five nights without any proper effort upon the part of defendant to keep him at home.

"Does this constitute wilful abandonment or neglect?

"Abandonment, perhaps, involves the absolute desertion of the child, but neglect does not. It simply means a failure to provide such things as are necessary for the preservation of its life and health. The Act of Assembly probably has a double purpose, the welfare of the child and the protection of the community from the evil of children raised in vagrancy. What failure will make a man amenable to the penalties of this law cannot be easily defined, and in fact no invariable rule can be laid down. Each case must depend upon its own circumstances, and be determined by the jury under proper instructions of the court.

"The general principles were well stated in the points submitted by the counsel for defendant, and especially in the third point, as follows: 'Wilful neglect of children, within the meaning of the statute under which the defendant is indicted, means a want of ordinary care, that is, without justifiable excuse, and such as arises from an evil intent to injure such children, or a culpable indifference to their welfare;' and unless the evidence fully and fairly satisfies the jury that this defendant has been guilty of that character of neglect it is their duty to return a verdict of 'not guilty.'

"The duty of a father to his infant child is maintenance, protection and education. Education is a duty of imperfect obligation, for the reason that it is not capable of practical enforcement. The amount and kind and mode of furnishing education, moral or intellectual, must therefore be left largely to the decision of the parent in each case. But the measure of duty as to maintenance and protection is more readily determined, and the failure to furnish such as is reasonably necessary under the circumstances, without justifiable excuse, is a violation of the law. Necessary maintenance requires the provision of proper food, clothing and shelter. The evidence in the case certainly

justified the finding that proper clothing was not furnished, and one regular meal each day would seem to be a poor allowance for growing children. There was no evidence that the rooms provided did not furnish sufficient shelter.

"But it is not sufficient that a parent furnish food, clothing and shelter, sufficient in quantity and quality for the support of his children. It would be no answer to a charge of neglect to show that sufficient food had been provided for a child too young to feed itself, or clothing for one unable to put it on.

"The duty of protection is not limited to preventing attacks by others. It requires that parents shall protect their children from the consequences of their own weakness and ignorance. It was therefore the duty of the defendant to see that his children had sufficient food properly administered, clothing suitable for the season, and kept in reasonably good condition, and that they availed themselves of the shelter provided for them. It is no answer to the charge of neglect to say that they destroyed their clothing, and that they preferred to sleep in cellars, and under doorsteps rather than in the house provided for them. If his business prevented his attention to these matters he should have provided care by others.

"It is little wonder that children would not remain in a house where no table was spread, and no comforts provided, except as they themselves could take care of. If the house was warmed the fires must have been tended by these little ones. There certainly was a want of ordinary care in the support and management of these children. Was there any justifiable excuse for this neglect?

"The defendant is a grocer. He says his business is small. But the evidence showed that out of his business he had acquired a house and lot for which he paid $8000. Upon this there was a building and loan association mortgage for $3000. How much of this was paid is not stated, but it, of course, represents stock to that amount. In this house he had his store, and the upper portion was rented for $480 per annum. He also owned electric railroad stock, paying dividends of $120 per annum. There was therefore nothing in his condition to prevent his making proper provision for his children. If his business was small it tends to show that he preferred to use his means in ac-

cumulating property rather than expend it in caring for them.

"If he was able to care for them and did not, his neglect must be regarded as wilful. Neglect is negative in character. When a positive act is done it generally carries with it evidence of the intent with which it was done. As to a matter negative in character, a person who knows his duty, is able to do it, and does not, must be held to have wilfully neglected it."

Nicholson's Appeal, 20 Pa. 50.

In the case of a legal guardian the quality of care can be attacked on a much wider basis than in the case of a parent—and properly so. In a decision of the Supreme Court it was very wisely said in 1852: "It matters little to an orphan child whether his interests are sacrificed and his prospects blighted by well meaning ignorance or by wilful malice. Either is within the definition of misconduct, a word which applies not to the motive but to the act."

199. Q. Who are "legally liable to provide" for a child?

A. Three classes of persons:

Sec. 28, Act of June 13, 1836, P. L. 539.

Manual, 1.

(1) Of his family, his father and mother, and his grandfather and grandmother, "being of sufficient ability" shall provide his support.

(2) Persons or private corporate bodies who have definitely accepted responsibility for his support and custody.

(3) Overseers of the poor who have assumed custody.

200. Q. Can each of these be prosecuted in some way for neglect to provide properly for the child?

A. Yes.

201. Q. How is prosecution effected?

A. Different procedures apply to each of these:

Meyers, Sheriff v. Northampton County, 22 Pa. Dist. 757.

Manual, 6, 7, 8, 9, 10, 13, 14, 26, 27.

(1) The law provides a special form of prosecution of a father guilty of non-support of his children. This may be initiated in court by his wife or children or any other person. The procedure is *quasi* criminal and is based on a long series of statutes: Act of April 13, 1867, P. L. 78; Act of April 15, 1869, P. L. 75; Act of March 13, 1903, P. L. 26; Act of April 15, 1913, P. L. 72; Act of June 11, 1913, P. L. 468; Act of

June 12, 1913, P. L. 502; Act of May 24, 1917, P. L. 268; Act of June 15, 1917, P. L. 614; Act of July 12, 1919, P. L. 939. They provide for seizure of property and punishment for wilful failure to provide. In addition to this procedure, court orders of this character can be entered and are collectible as judgments against a man's property.

Act of May 24, 1923, P. L. 446.

Manual, 17, 18, 19, 20, 21.

Another long series of acts provide for the procedure to be followed in compelling the father of an illegitimate child to contribute to its support, these include Sections 37 and 38, Act of March 31, 1860, P. L. 382; Act of May 24, 1917, P. L. 268; Act of July 11, 1917, P. L. 773; Act of July 21, 1919, P. L. 1075.

Manual, 13, 14, 54 to 61.

(2) In the case of the mother of a child (as also in the case of the father) poor law officers are authorized to proceed against her in magistrate's court and Court of Quarter Sessions which may order property to be seized and liquidated or may give a jail sentence if there is no property. Both she and the father "being of sufficient ability," are subject, on failure to provide for a child, to an order, to be made by Court of Quarter Sessions, of an amount not exceeding twenty dollars per month to be applied for the relief and maintenance of the child.

Sec. 4, Act of April 6, 1905, P. L. 112.

(3) Grandparents "being of sufficient ability" are liable for the support of grandchildren and on failure to do so are subject to a forfeit of a sum not exceeding twenty dollars per month to be applied to the relief and maintenance of the child.

Sec. 28, Act of June 13, 1836, P. L. 539.

Manual, 1.

(4) The procedure against the person or agency who assumes responsibility for a child's care and then wilfully omits to provide it with "necessary" food, clothing or shelter is by criminal prosecution under the Acts of 1860, 1879 and 1907. Such cases are most likely to arise in connection with children placed on definite agreements made by their parents with an institution or other caretaker or by careless and irresponsible child placing agencies with people who neglect them. (See Question 198.)

Sec. 90, Act of March 31, 1860, P. L. 382; Sec. 1, Act of June 14, 1879, P. L. 142; Sec. 1, Act of May 29, 1907, P. L. 318.

Manual, 604, 602, 601.

(5) The neglect of a child in the custody of the overseers of the poor is an offense at common law, as well as under these statutes. Said the Supreme Court in 1894:

Commonwealth v. Coyle, appellant; Commonwealth, appellant v. Coyle, 160 Pa. 36.

"James Coyle, appellant, Michael Seavers and John H. Rhoads were jointly indicted and tried for neglect of their duty as directors of the poor. . . . A verdict of guilty was rendered by the jury. . . . The pith of the complaint against them was that they neglected to discharge a duty which in their official capacity they owed to Joseph N. Diller, a poor and infirm child aged seven years, who was a legal charge upon the county . . . and that in consequence of their neglect he died."

"In the first count of the indictment they were charged with having knowingly permitted him to be grossly maltreated by the person to whom he was apprenticed by them, and in the second count thereof, with having, while he was in their charge and under their care, wilfully neglected to provide him with reasonable and necessary food and clothing, and otherwise abused and ill-treated him. The evidence produced on the trial was clearly sufficient to warrant the conclusion that the death of the child was hastened by, if it was not solely attributable to, the treatment he received while in the custody of Lafferty, to whom he was bound by them on the 4th of June, 1891, for a term of fourteen years. It was also sufficient to sustain a finding that before they committed the child to the care of Lafferty they knew or ought to have known that the latter was not a proper person to have control of the former. Boyer, who was their representative in the arrangement under which the child was left at Lafferty's six weeks before he was indentured, was advised by persons in the neighborhood that it was an unsafe place for a boy of his years. The testimony of Underwood and Fink on this point showed that they gave him information in respect to the character of Lafferty and his family, and their harsh treatment of a child in their care, which would have prevented any prudent person from committing a boy of tender years to their custody. A parent so informed would not have surrendered his or her child to their possession and control without an investigation which demonstrated that the charges against them were groundless. The care which a parent ought to exercise under such circumstances devolved upon the directors when young Diller became a charge on their district, and there is reason to believe that if

they had faithfully performed the duty thus cast upon them, he would not have been subjected to the cruel treatment which appears to have been responsible, in some degree at least, for his untimely death. But it is manifest from the testimony that they did not exercise the care enjoined by the law, and that they were negligent in binding him to Lafferty and in their failure to institute proceedings to cancel the indenture. We need not repeat or discuss the testimony descriptive of the neglect and cruelty to which the child was subjected. It is sufficient to say of it that in our opinion it fully sustained the charges made in the first and second counts of the indictment.

"It is contended that the indictment does not charge an offence known to the criminal law; that the directors are not indictable under Sec. 42 of the Act of June 13, 1836, P. L. 550, because the office of overseer of the poor is abolished in Cumberland County, and that they cannot be prosecuted under Section 90 of the Act of March 31, 1860, P. L. 405, because it appears from the indictment and the testimony that the maltreatment complained of was after they left the child with Lafferty, and was inflicted by him and his family. The counsel for the Commonwealth agree with the counsel for the defendants that this case is not governed by the statutes referred to, but the former maintain and the latter deny that the matters charged in the indictment constitute a common law misdemeanor.

"We think the contention of the defendants that the common law does not hold them criminally liable for a wilful neglect or refusal to discharge their duties as directors is unsound. In Am. & Eng. Ency. of Law, Vol. 19, p. 504, the rule on this subject is stated thus: 'The neglect or failure of a public officer to perform any duty which by law he is required to perform is an indictable offence even though no damage was caused by the default, and a mistake as to his powers or with relation to the facts of the case is no protection.' In Russell on Crimes, Vol. 1, p. 80, it is said that 'it is an indictable offence in the nature of a misdemeanor to refuse or neglect to provide sufficient food or other necessaries for any infant of tender years unable to provide for and take care of itself (whether such infant be child, apprentice or servant) whom the party is obliged

by duty or contract to provide for, so as thereby to injure its health.' In Archbold's Criminal Pleading and Practice, Vol. 2, p. 1365, it is said that 'an overseer of the poor is indictable for misfeasance in office, as if he relieves the poor where there is no necessity for it; Tawney's Case, 16 Vin. Abr. 415; or if he misuse the poor, as by keeping and lodging several poor persons in a filthy and unwholesome room with the windows not in a sufficient state of repair to protect them against the severity of the weather: Rex v. Wetherill, *et al.,* Cald. 436; or by exacting labor from them when they are not able to work: Rex v. Windship, *et al.,* Cald. 76. And if overseers conspire to marry a poor woman big with child for the purpose of throwing the expense of maintaining her and the issue from themselves upon another parish or township, they may be indicted: Rex v. Compton, Cald. 246. And for most breaches of their duty overseers may be punished by indictment or information.' In Pennsylvania, overseers of the poor have been indicted, convicted and sentenced for a misdemeanor in office in selling the keeping of paupers by public vendue or outcry to the lowest bidder: 9 Pa. 48-9.

"It is a wise policy which exacts from a public officer, intrusted with the care of the poor persons in his district, faithful and humane administration of the laws enacted for their relief. In the proper enforcement of such laws they have considerate and kind treatment and a comfortable maintenance. Their inability to provide for themselves is not a crime nor any excuse for neglecting or maltreating them. As charges upon the district they are entitled to have from it wholesome food and comfortable clothing, and a sufficiency of both. If they are of tender years, or from any cause unable to work, it is an act of cruelty to exact from them the performance of tasks which are beyond their strength and injurious to their health. It is culpable negligence in an officer representing the district charged with their support to bind an infant pauper to service with a person whose parsimony and cruelty in the treatment of poor children committed to his care were well known in the neighborhood in which he lived. Inquiry in respect to the character of the master is a duty, and, where he resides in a county outside of the district in which the pauper is settled and is personally a stranger to the officer, the

non-observance of it is a misdemeanor. It seems to us also that it is his duty after the child is bound to service to see that the covenants of the master are substantially complied with, and, if these are wilfully and persistently violated to the injury of the child's health, to institute the necessary proceedings to set aside the indenture.

"In the present case the directors, with knowledge of Lafferty's character, bound young Diller to him, and, with knowledge of the abuse the child was receiving from his master, refused to take any measures to rescue him from the cruelty to which he was subjected by their own negligent act. If, as they contend, their conduct is not condemned in terms by any of our statutes in relation to the care of the poor, it is gratifying to know, as we have seen, that the common law holds them responsible for it as a misdemeanor in office."

202. Q. Is the failure on the part of parent or custodian to provide medical attendance for a sick child an offense?

Commonwealth v. Breth, 44 Pa. Co. 56.

A. A parent may be convicted of manslaughter for the death of his child where knowing that the child is dangerously ill and having the ability to secure medicine and medical attendance, he fails to provide such medical attendance and medicine.

"We say to you, as a matter of law, that this father was under a legal duty to provide necessaries for his child. We say further to you, as a matter of law, that necessaries embrace in time of sickness medical attendance and medicines, if the condition of the sick person reasonably requires it. We say further to you, that when the sick person is an infant five months old and the father is of sufficient ability and has the opportunity to procure medical attendance and medicines, it is his legal duty to furnish them whenever the health or physical condition of the child reasonably required it. If the case of sickness is not merely slight but is of such a character that ordinary prudence would indicate that the services of a physician and the administration of medicine should be provided, and it is reasonably within the power of the parent to provide it, in the case of a helpless and dependent infant if the parent fails so to do, such failure is negligence upon his part, and if under all the circumstances it rises

to gross and culpable negligence, and by reason of such neglect the death of the child ensues, he is guilty of involuntary manslaughter."

It is set forth in this case that "It would not be a lawful excuse for the non-performance of this duty that he entertained some religious or conscientious belief that it was unnecessary or that he had no intent to do anything which would interfere with the recovery of the child nor that he was honestly mistaken as to the efficacy of the means which he did use. As a citizen of this Commonwealth and the parent of this dependent child, the law of Pennsylvania, so long as he remains within its borders, put upon him the duty of doing those things for its protection which the ordinary judgment of prudent men at the time and place would dictate, and his failure so to do would be negligence, and if the circumstances indicated that the child's condition required great care, his failure to provide the means ordinarily used by prudent men and at his disposal would be gross or culpable negligence.

"The Commonwealth further contends that the defendant did not even carry out the scriptural injunction upon which he relied, but substituted for a part of the plain reading of the passage the assurance of one of his brethren. We do not regard this as of much consequence. The question is not whether he failed to provide the means according to the view which he presented, but whether he failed to furnish the medical attendance and medicine which the law required him to furnish whenever the health and physical condition of his child required it, without lawful excuse. In considering whether or not he acted without lawful excuse, we repeat again that no religious or conscientious conviction upon his part, no matter how entertained by him, is such lawful excuse, but you are to take all the facts and circumstances into consideration in determining whether or not under all these facts and circumstances there was gross or culpable negligence upon his part."

The responsibility of the parent who holds religious beliefs which run counter to the use of medical care is discussed in Commonwealth v. Hoffman, 29 Pa. Co. 65, and First Church of Christ Scientist, 205 Pa. 543.

Commonwealth v. Hoffman, 29 Pa. Co. 65.

First Church of

"Was such treatment sufficient? Would the demands of ordinary prudence be satisfied with this and nothing more? Or is there, side by

Christ Scientist, 205 Pa. 543.

side with faith and prayer, room for the employment of human agencies, without the employment of which the demands of ordinary prudence would not be satisfied? And we may well believe that the demands of ordinary prudence do not run counter to divine authority, for the same inspired writer whose injunctions the defendant has sought so literally and conscientiously to observe, informs us that 'as the body, without the spirit, is dead, so faith without works is dead also.' It is a part of the common belief that there is a domain sacred to faith alone. But there is also a field where works, consisting of the varied agencies for human good may and should be employed, and that field is as wide as human need and suffering. Far be it from me to detract one iota from the sincere motive that impels to prayer for the healing of our sick ones, but, as said in a recent case by the highest court in our State: 'The common faith of mankind relies not only upon prayer but upon the use of means which knowledge and experience have shown to be efficient. There is ample room for the office of prayer in seeking for the blessing of restored health, even when we have faithfully and conscientiously used all the means known to the science and art of medicine.' And may we not add to this language of our highest court that the same Supreme Power to which faith looks up in prayer has placed within the reach of man plant and herb and the minerals of earth, endued with healing properties, apparently inviting to their use at the hand of man?''

The attitude of the law and the courts toward the parent who fails to provide proper medical care at the birth of a child with the result that the baby dies, is as follows:

Commonwealth v. Signerski, 14 Pa. Dist. 361.

''Whether the killing, if it existed in the present case, was murder or manslaughter, will depend upon your inference from the testimony whether the circumstances are such to show that there was an intent to kill, an intent to do bodily harm, or a knowledge that what was done would produce death, or whether, on the other hand, it was gross negligence under the circumstances of the case. There is a case somewhat like this in the English books, and the court in that case, which was the case of an abandonment of an infant upon the highway, left the question to the jury whether it was murder or manslaughter. The court, in summing up to

the jury, used the following language: 'If a party do any act with regard to a human being, helpless and unable to provide for itself, which must necessarily lead to its death, the crime amounts to murder; but if the circumstances are not such that the party must have been aware that the result would be death, that would reduce the offence to the crime of manslaughter, provided the death was occasioned by an unlawful act, but not such as to imply a malicious mind. There have been cases where it has been held that persons leaving a child exposed and without any assistance, and under circumstances where no assistance was likely to be rendered, and thereby causing the death of the child, were guilty of murder.' . . .

. . . . . .

"First of all, as a preliminary, it was incumbent upon the Commonwealth to prove the *corpus delicti;* that is, to prove the fact of the death. And the fact of life it was necessary to prove in this case. But a spark was enough. If the man extinguished the spark of life, it was enough. If that spark existed, it was a crime to extinguish it. I shall not moralize, but simply give you the law. The Commonwealth showed, and it was not rebutted—there was no testimony that I recollect to the contrary—that the child was born alive. It showed that by the testimony of the physician who conducted the autopsy, who said, if I recollect aright, there was some air in the lungs, which was a proof that life had existed. There was, however, a lack of testimony on one other point and as to that—how long that life existed we do not know, and, therefore, I think, various inferences may be drawn from those facts. We do not know from the evidence, positively, how long that life existed. I listened with interest to hear the answer of the woman as to whether her baby had cried. She said she did not hear it. Life may have existed for a brief time, or it may have existed for a considerable time. We are in doubt as to that. And the death may have been produced—I do not think it is an unwarrantable inference at all from the facts, and the Commonwealth has urged you to that view of it—and if you come to that view of it, the law will take its course—that this man, with malice aforethought, wilfully, deliberately and premeditatedly extinguished the spark of life at that time. If he did, if he was there, and if

with premeditation—and that does not mean that you take a long while to think it over, but time enough to think over it—premeditated—if he willed it and took time enough to deliberate—and if it was wilful and premeditated, and he extinguished that spark of life, then he is guilty as the Commonwealth asks you to say he is guilty.

"On the other hand, that infant may have met its death from an intent on his part to kill, or an intent on his part to do that infant bodily harm—I should think it would have been an intent to kill, or if he acted with the knowledge that what he did would produce death, and in this is included malice, but without wilful and deliberate premeditation—that amounts to murder of the second degree.

"I have tried to be clear and I have tried to be simple. We cannot avoid our responsibilities in this world, and I put to you the law as it exists.

"Thinking over this case, there is another alternative, on which I express no opinion, which, under the law, it seems to me, is proper to be considered, especially as this man's life is at stake, tried here for murder and pressed for first degree. That is, that that little infant may have come to its death from gross negligenee on his part if he was there, and that it may have been buried after it died. That is, that there was not on his part, even though he were there, that wilfulness, deliberation and premeditation necessary to make up the crime of murder of the first degree, nor even the malice which is necessary to make the crime of murder; but the neglect of duty on the part of the parent, that is, if you believe he was the parent of the child—the neglect of his duty, the neglect when the woman was in the pains and perils of childbirth to summon aid, would amount in the law to the crime of manslaughter."

203. Q. Have the laws or the courts ever specifically discriminated in depriving a parent of the custody of a child on a charge of neglect between the negleet which grows out of the hard conditions of poverty and that which is attributable to indifference or negligence?

Flexner and Oppenheimer: The Legal Aspect of the Juvenile Court, U. S. Children's

A. Not in any very clear-cut way, although attention is usually paid to this point. Of juvenile court laws in the United States it has been said:

Bureau, Publication, No. 99, pp. 18, 19.

"Statutes such as these intrust to the juvenile courts large powers, powers compared to which, as Dean Pound has said, 'the powers of the Court of Star Chamber were a bagatelle.' But juvenile-court judges in general have recognized that there must be definite limitations to their interference with family life; it is necessary that the jurisdiction given the courts be broad, but it is equally clear that there be recognized certain rules as to the way in which this jurisdiction should be exercised. In the words of the Illinois court, a juvenile-court law 'should not be held to extend to cases where there is merely a difference of opinion as to the best course to pursue in rearing a child.' Nor, as was said by a California court of appeals, does the juvenile-court law contemplate the taking of children from their parents 'merely because, in the estimation of probation officers and courts, the children can be better provided for and more wisely trained as wards of the State.'" . . . "This new power which modern legislation has given to juvenile courts must be exercised with the utmost caution. No parent should ever be deprived by the courts of the custody of his children merely because of his poverty. There is a social interest in the preservation of family ties as well as in the physical welfare of children."

204. Q. Is not this legal problem further complicated by the growth of child welfare organizations anxious to provide the child with advantages of care and education which the parent cannot afford on condition that they be given its custody?

Hochheimer: A Treatise on the Law Relating to the Custody of Infants, 1887, pp. 143-144.

A. Yes, but this question cannot arise as a direct contest for custody as long as the child remains with the parent. While the parent has no legal right definitely to transfer his custodial rights, he may, of course, place his child with another caretaker. Having done that the question sometimes arises whether, under certain conditions, he does not thereby abandon the child or at least so relinquish its custody that on his attempt later to recover it, the case will be judged purely on the basis of what is best for the child, regardless of any parental claims.

The fears of poor parents who cling tenaciously to their children are not only founded

on instinctive feelings but are also justified by actual legal rulings.

The aims of child caring institutions are often not sufficiently defined to make clear whether in caring for the child, the purpose is to extend this form of aid to a hard pressed but otherwise fit parent or to try to extend aid to selected children and if possible to secure for them more than falls to the lot of the great mass of children living with their parents.

Legal Adoption in Pennsylvania, published by the Children's Commission, 1924.

With regard to adoption, the law in Pennsylvania has held rather consistently that there must be clear and unmistakable evidence of the intention to abandon a child before the parent's right to consent is forfeited. The securing of care by an agency or institution especially one that offers such services, is not considered an abandonment but quite the contrary—an evidence of parental solicitude for the child.

On the other hand in custody cases the legal rulings are not nearly so strict as to parental "rights" though the Superior Court has recently expressed an attitude and an opinion which is of similar tenor to that usually displayed in adoption cases: "This is a proceeding under the Act of April 23, 1903, relating to the care, treatment and control of dependent, neglected, incorrigible and delinquent children under the age of sixteen years. The case was presented to the Court of Quarter Sessions sitting as a juvenile court by the district attorney on the petition of a citizen of the Borough of Huntingdon who was also the chief of police. It was alleged in the petition that Nellie Showalter Mountain of that borough was the mother of five children under sixteen years of age—the oldest being about thirteen years old, and the youngest about four years old; that the children were dependent and had been for some time neglected by their mother. On the 26th of January, 1923, a hearing on the petition was set for January 31, 1923, on which latter date testimony was taken, whereupon the court found that 'the children named in this petition have not had proper parental care, and are therefore neglected children within the meaning of the Juvenile Court Acts.' The court then directed that they be placed in the care and custody of 'the Children's Home Society of Pennsylvania,' a corporation having its place of bus-

Commonwealth v. Nellie Showalter Mountain, appellant, 82 Super. Ct. 523.

iness in Allegheny County, Pennsylvania. The testimony taken at the hearing was not made a matter of record nor reduced to writing. We have nothing, therefore, but the order of the court for consideration. We would lend an attentive ear to the complaint of this mother from whose custody and care her children had been taken if the testimony on which the action of the court was based had been brought up as a part of the record. The right of the mother to the care and comfort of her little children is one of the highest recognized by the law and the proceedings should be subject to review which not only takes such children from their home and kindred, but removes them to a distant place where they are in charge of an institution invested with authority to place them in private homes and to give legal consent to their adoption as members of the families of strangers.''

Commonwealth, ex rel. v. Bickel, et al., appellant, 78 Super. Ct. 348.

The attitude of this court is also very well expressed in another recent case in which neglect is charged: ''Now, the petition on which the entire question rests mentions but one thing, which would have prevented the court sweeping aside the whole proposition on a demurrer to the petition. That averment in the petition was this: 'And that the said children are unlawfully neglected.' The statute which confers upon the Courts of Quarter Sessions of Pennsylvania sitting as juvenile courts jurisdiction to interfere in a case of neglected children defines what is meant by 'neglected children.' We quote from the Act of 1903: 'and for the purpose of this act the words ''dependent child'' and ''neglected child'' shall mean any child who is destitute, homeless, abandoned or dependent upon the public for support or who has not proper parental care or guardianship.' There is but a scant bit of testimony that would even seem to support the averment in the petition that these children were 'neglected' within the meaning of the statute. It may be they were dirty, not up to the standard of cleanliness that modern health regulations imposed. It was not the purpose of the statute to make dirty children clean, if they were otherwise healthful and in no way threatened the public health of the citizens of the Commonwealth. The great bulk of the evidence seems to show there was really nothing wrong with the children who are the subject of this com-

plaint except that they were dirty and not well groomed. Much of the evidence was directed to a description of a public dump pile not on the property of the respondents but adjacent to it. Some small part of the effort that has been expended in this case if directed to the city authorities would doubtless have led to the removal of the dump pile. That removed there would be little left to this case. It was not the purpose of the statutes now in force in Pennsylvania to prescribe just how often in a week a child should be scrubbed. Within the writer's knowledge a generation of vigorous men and women have grown up under conditions that would not meet the approval of some of the witnesses of the Commonwealth. There is no evidence of any sickness among these children. There is plenty of evidence on behalf of the respondents that the children are well enough cared for and do not by any means come within the language of the statute. There is evidence, uncontradicted, that the mothers of both of these children are capable of maintaining them in such reasonable home as would satisfy every requirement of the statute. Looking over all of the evidence, we cannot see a case which would justify the strong arm of the law in taking these children away from the custody of the respondents in whom their mothers have confidence and sending them to a public institution, which may mean a great deal in their future lives. We are of opinion that the learned judge below made a mistake in ordering these children to be taken away from the habitation or place where they lived with the consent and approval of their respective mothers and transferring them to a public institution of the State of Pennsylvania. We must, therefore sustain the assignments of error. The order or decree of the court below is reversed, the costs of this appeal to be paid by the appellees.''

205. Q. From what sources do petitions alleging neglect of a child arise?

A. The Juvenile Court Act says that any citizen, resident of the county may file such petition.

Ninth Annual Report of the Municipal Court of Philadelphia, 1922, p. 125.

A recent report of the Philadelphia Municipal Court states the sources of 885 petitions filed in the year 1922 as follows:

| | |
|---|---|
| Filed by social agencies | 392 |
| Filed by mother | 178 |
| Filed by father | 161 |
| Filed by relative | 76 |
| Filed by probation officer | 50 |
| Filed by caretaker | 22 |
| Filed by attorney | 6 |

It is difficult to see how a "caretaker" could validly file a petition alleging neglect against himself. It is possible that this method was used to force the parent to make provision for the child or to pay arrearages of the child's board. The petitions filed by parents raise interesting questions. It seems probable that a more logical procedure would have been either a *habeas corpus* action to secure possession of the child, if the parent who had its custody was neglectful and the other parent wished to secure its custody or a dependency petition if the desire was to secure assistance from the community in the care of the child.

206. Q. How does the standard Juvenile Court Act define neglected child?

A. "The words 'neglected child' include:

A Standard Juvenile Court Law published by the National Probation Association, Inc., 1926, p. 9.

(a) A child who is abandoned by his parent, guardian or custodian.

(b) A child who lacks proper parental care by reason of the fault or habits of the parent, guardian or custodian.

(c) A child whose parent, guardian or custodian neglects or refuses to provide proper or necessary subsistence, education, medical or surgical care or other care necessary for the health, morals or well-being of such child.

(d) A child whose parent, guardian or custodian neglects or refuses to provide the special care made necessary by the mental condition of the child."

207. Q. What dispositions are actually made of neglected children?

Eleventh Annual Report of the Municipal Court of Philadelphia, 1924, pp. 10, 22.

A. The Philadelphia Municipal Court reports that in 1924 it disposed of 988 "new charges" in neglect cases as follows:

| | Percentage |
|---|---|
| Dismissed, discharged, withdrawn, referred to other courts, continued until further notice, etc. | 3 |
| Adjudged in need of the care and protection of the court | 97 |
| Probationed or paroled | 32 |
| Committed to the care of individuals | 5 |
| Committed to child-placing agencies | 46 |
| Committed to institutions | 13 |
| All other dispositions | 1 |

208. Q. What is the legal background of interfering with parental conduct on the grounds of "improper care and guardianship?"

Hochheimer: A Treatise on the Law Relating to the Custody of Infants, 1887, p. 48.

A. Its background lies in the exercise of jurisdiction over wards in chancery and in the theories which lay back of the awards by the Common Pleas Courts in cases of disputed custody.

The theories of chancery jurisdiction are well expressed in the famous case in which Lord Wellesley lost the custody of his children upon the ground that his immoral habits and conduct rendered him unfit to have the care of them. This was first decided in the High Court of Chancery from which it was appealed to the House of Lords by Lord Wellesley on the ground that the court was without jurisdiction. In the trial in the House of Lords in 1828, Lord Redesdale pointed out that for a hundred and fifty years the Court of Chancery had assumed authority in the care of infant wards and had the right to assert it even against the father. He maintained that this assertion of authority did not interfere with the right of a father to the care and custody of his children "but the question is, whether the father, having that right, is to be at liberty to abuse that right. That is the real question. Why is the parent entrusted with the care of his children? Because it is generally supposed he will best execute the trust reposed in him; for, that it is a trust, of all trusts the most sacred, none of your Lordships can doubt."

Hochheimer explains that while in theory the Court in Chancery has held that its authority extended to any child in the realm, as *parens patriae,* it was actually only in cases where

there was property to administer to promote the child's welfare and interests that it was exercised. He sets forth the following:

Hochheimer: A Treatise on the Law Relating to the Custody of Infants, 1887, p. 53.

"The jurisdiction thus asserted is ample, effectual and far reaching. By the very fact of the institution of a proceeding affecting the person or property of an infant the court acquires jurisdiction, and the infant, whether plaintiff or defendant, immediately becomes a ward of the court, and, as such, falls under its special cognizance and protection, and no act can be done affecting the person, property or state of such infant, unless under the express or implied direction of the court itself. Therefore, when application is made to a court of common law to deliver up a child to its guardian upon *habeas corpus,* if it appear that there are proceedings in chancery, the court will decline to entertain the suit; and, it would seem, that the Chancery Court may even restrain the guardian from proceeding at law by *habeas corpus.* Nor is it necessary, in order to enable the Chancery Courts to act, that there should be a pending suit for property, though, it seems, in practice, it should always be alleged in the bill or petition that the infant has property within the jurisdiction, and that the suit should be docketed against the person in whose supposed custody or power the property is. As a general rule, it may be stated, that the courts do not interfere with the guardianship of infants, except where there is property to act upon. This is not, however, from any want of jurisdiction, but from a want of means to exercise the jurisdiction, because the Courts of Chancery cannot take upon themselves the maintenance of all children. They can exercise the jurisdiction usefully and practically only where they have the means of doing so, that is to say, generally speaking, by having the means of applying property for the use and maintenance of infants. But there is no inflexible rule upon this subject. Thus, in one case, the High Court of Chancery in England held, that the court could make an order for the delivery of an infant to the person who ought to have the custody, upon a simple petition presented for that purpose. 'I have no doubt,' said Lord Chancellor Cottenham, 'about the jurisdiction. The cases in which this court interferes on behalf of infants are not confined to those in which there is property. Courts of law inter-

fere by *habeas* (*corpus*) for the protection of the person of anybody who is suggested to be improperly detained. This court interferes for the protection of infants, *qua* infants, by virtue of the prerogative which belongs to the Crown as *parens patriae,* and the exercise of which is delegated to the Great Seal.' The courts have repeatedly taken action having in view the protection of the persons and estates of infants, upon a simple petition presented for that purpose.''

The short cut method of the juvenile courts of making an order on the public treasury is a very modern invention in chancery jurisdiction and gives the doctrine of *parens patriae* a more concrete expression and an infinitely wider scope in actual practice.

The right of the English Courts of Common Pleas to deprive a father of custody on the grounds that the child's welfare required other custody, especially the mother's, was much debated but seems to have been at least the underlying theory of the law, but a theory from which there were such frequent departures and such peculiar constructions that Parliament undertook through the Custody of Infants Acts (1839 and 1873) to secure better rules by which the courts should go. It was later said that in these laws Parliament did little more than restore the law to its former condition.

209. Q. What constitutes improper care and guardianship in the eyes of a Court of Chancery?

A. In England, gross immorality of a father has been regarded as sufficient to warrant taking his children out of his custody. The holding of atheistic beliefs has also been the cause for such action.

The case of Mrs. Besant, one of the early advocates of birth control, illustrates the attitude of the English courts on improper care and guardianship. The religious opinions of Mrs. Besant in relation to the upbringing of her daughter were discussed by Sir George Jessel, Master of the Rolls, in his decision of this case. ''It is not necessary for me to express an opinion of the religious convictions of others; but I must, as a man of the world, consider what effect on a woman's position this course of conduct must lead to. I know, and must know, as a man of the world, that her course of conduct

Hochheimer: A Treatise on the Law Relating to the Custody of Infants, 1887, p. 63.

must quite cut her off, practically, not merely from the sympathy of, but from social intercourse with the majority of her sex . . . and I must take that into consideration in determining what effect it would have upon the child if brought up by a woman of such reputation. But the matter does not stop here. Not only does Mrs. Besant entertain these opinions which are reprobated by the great mass of mankind (whether rightly or wrongly, I have no business to say, though I, of course, think rightly), but she carries those speculative opinions into practice as regards the education of the child, and, from the moment she does that, she brings herself within the lines of the decisions of Lord Chancellors and eminent judges with reference to the custody of children by persons holding speculative opinions, and, in these cases, it has been held that, before giving the custody of a child to those who entertain such speculative opinions, the court must consider what effect infusing these opinions, as part of its practical education, would have upon the child."

In addition to her irregular views, her publication of an "immoral" or "obscene" pamphlet also evidenced her unfitness to care for her daughter. Upon appeal his judgment was confirmed.

The law in Pennsylvania is not well defined on this subject. As actually administered by courts there is great reluctance if not refusal, to consider ordinary irregularities in the life of a parent as a justification for depriving him of custody. If the child itself is being initiated into practices which offend against morals, the case is stronger.

The alternatives for care which are presented in the individual case constitute an important aspect of the problem of improper care and guardianship. Merely removing the child from one parent or from a home where conduct is irregular does not insure that there can be found for the child a new environment, which taken as a whole, will contribute more to his welfare than the one from which he has been removed. This discovery was made very early in Pennsylvania courts and is fearlessly set forth in a famous case upon which Chief Justice Tilghman rendered the decision. The case is summarized as follows by Hochheimer (p. 108):

The Commonwealth against Addicks and wife, 5 Binney 519; 2 S. & R. 174.

"The case of Comm. v. Addicks, arose in

1813 before the Supreme Court of Pennsylvania, and it has been said of this case, that it is the leading American case on the subject, giving tone to all the decisions of other states. The court, upon the application of Joseph Lee, granted a *habeas corpus* to bring up his two infant daughters, aged, respectively, seven and ten years. They were brought into court under the care of their mother, Barbara Addicks, with whom, as was stated in the return, they had lived ever since their birth. The relator had been divorced from the mother for adultery, and she afterwards married one Addicks, who together with her, was made respondent upon the application. The parents introduced in evidence charges and counter charges of a nature so usual in such proceedings. The opinion, by Tilghman, C. J., is as follows:

"'We have considered the law, and are of opinion that, although we are bound to free the person from all illegal restraints, we are not bound to decide who is entitled to the guardianship, or to deliver the infants to the custody of any particular person. But we may, in our discretion, do so, if we think that, under the circumstances of the case, it ought to be done. For this we refer to the cases of The King v. Smith (2 Str. 982) and The King v. Delaval (3 Burr. 1436). The present case is attended with peculiar and unfortunate circumstances. We cannot avoid expressing our disapprobation of the mother's conduct, although, so far as regards the treatment of the children, she is in no fault. They appear to have been well taken care of, in all respects. It is to *them* that our anxiety is principally directed; and, it appears to us, that, considering their tender age, they stand in need of that kind of assistance which can be afforded by none so well as a mother. It is on their account, therefore, that, exercising the discretion with which the law has invested us, we think it best, at present, not to take them from her. At the same time, we desire it to be distinctly understood, that the father is not to be prevented from seeing them. If he does not choose to go to the house of their mother, she ought to send them to him, when he desires it, taking it for granted that he will not wish to carry them abroad, so much as to interfere with their education.'

"Three years after the above decision the father made another application, (2 S. & R. 174,

decided 1816), upon *habeas corpus,* for the custody of the children, and the custody was then awarded to him, upon the ground that their mother's influence and example would have an injurious effect upon their morals. The court referred to and reiterated the positions held in the former case. 'The great object of the writ of *habeas corpus,*' said Tilghman, C. J., 'is to free the person from illegal restraint. That being done, the court may proceed farther or not, as the circumstances require. These children do not stand before us in the same situation as formerly. The eldest has now arrived at a critical age; every moment is important; and the education of the next three years will probably be decisive of her fate. The case of the youngest is not so urgent. But it is important that the sisters should not be separated. When we decide for the one, therefore, we must decide for both.' The court laid great stress upon the fact that the mother's second marriage was void and that, to continue the children with her would be to instil into their minds lax notions of the sacredness of the marriage obligation.''

The courts have held that, just as under certain circumstances irregularity of morals was no bar to a parent's retaining custody, so virtue constituted no indisputable claim to custody. Hochheimer summarizes another well known case:

Hochheimer: A Treatise on the Custody of Infants, 1887, p. 110.

''The case of Comm. v. Sears (3 Law. Rep. 304), generally cited as the 'D'Hauteville Case,' decided 1840 by the Philadelphia Court of Session, is a case that is quite frequently referred to, and one that attracted much attention, at the time, on account of the personal incidents connected with it. In addition to the report cited, a full report of the whole trial, including the testimony, appears in a separate volume published in Philadelphia, 1840. The writ of *habeas corpus* was issued at the instance of the father to bring up his infant son, aged less than two years, and detained in the custody of the mother, who had left her husband on account of unhappy differences, and resided with her parents, who, together with her, were made respondents in the proceeding, the blame of the separation, as usual in such cases, being visited by each upon the other, and the stereotype criminations and recriminations that form the bulk of the testimony in controversies

between husband and wife for infant children being spread out upon the proceedings. On the part of the relator it was contended, that the custody of the child is the vested and absolute right of the father, one of which he cannot be deprived, except where it becomes forfeited either by his unfitness to take charge of its morals and interests or by such misconduct as would afford good ground for a divorce *a vinculo matrimonii,* and the court was earnestly invoked to treat the decision in the Addicks case as a judicial anomaly, to 'ride over it and ride it down;' but the principle of the decision in that case was fully sustained and confirmed.

" 'If the father's right,' said the court, 'could be forfeited only by immoral conduct or character, or by his unfitness to superintend the moral and intellectual culture of his child, there has been nothing developed in the present case which could properly interpose to take away from him that right. But I cannot believe that the exceptions to such right are circumscribed within so limited a circle—a belief which would be in the face of nearly every decision cited as well for the relator as by the other side. The reputation of a father may be stainless as crystal; he may not be afflicted with the slightest mental, moral or physical disqualification from superintending the general welfare of the infant; the mother may have separated from him without the shadow of a pretense of justification; And yet the interests of the child may imperatively demand the denial of the father's right and its continuance with the mother . . . The pecuniary means of the respondent to properly attend to the education and interests of the child, are beyond all doubt; her maternal affection is intensely strong; her moral reputation is wholly unblemished; and, under these admitted or established facts, the circumstances of the case render her custody the only one consistent with the present welfare of her son. The tender age and precarious state of its health make the vigilance of the mother indispensable to its proper care; for, not doubting the paternal anxiety would seek for and obtain the best substitute which could be procured, every instinct of humanity unerringly proclaims that *no* substitute can supply the place of HER, whose watchfulness over the sleeping cradle or waking moments of her offspring is prompted by deeper and holier feelings than the most

liberal allowance of a nurse's wages could possibly stimulate.' The court accordingly remanded the child to the custody of its mother."

## VII. OTHER CLASSES OF CASES WITHIN THE JUVENILE COURT'S JURISDICTION.

210. Q. What jurisdiction have juvenile courts in the commitment of defective children to agencies or institutions designed for their treatment and care?

Act of June 7, 1923, P. L. 677, No. 276; Sec. 311, Act of July 11, 1923, P. L. 998; Petition of the Pennsylvania Society to Protect Children from Cruelty, 22 Pa. Dist. 347.

A. Exclusive jurisdiction in the cases of crippled children and concurrent jurisdiction in cases of those who are "mentally defective."

Moreover, if a defective child is also dependent or neglected the juvenile court may take jurisdiction. It has been held that the child's mental or physical defect is no bar to his claims upon overseers of the poor for care as a dependent child.

Sec. 1 ,Act of July 17, 1917, P. L. 1015, amending Sec. 11, Act of July 12, 1913, P. L. 711.

Manual, 342.

The Philadelphia Municipal Court has been given exclusive jurisdiction, by special legislative provision, in all proceedings "wherein it is alleged that any child is suffering from epilepsy, nervous or mental defects, as defined by existing laws relating thereto."

Secs. 309 and 311, Act of July 11 1923 P. L. 998.

Manual, 563, 565

This provision in the Municipal Court Act was given rather special meaning in the Mental Health Act of 1923. In the main it is provided that state and semi-state institutions for mental defectives may exercise judgment in admitting pupils and patients and that the poor directors of the place of the child's residence shall ascertain whether the parents are able to pay and if not the directors are to pay the required charges for maintenance. Where a court commitment is used, the forms of application, hearing and disposition are minutely prescribed in the Mental Health Act. It is "provided, however, that in any judicial district in which there is a municipal court vested with the exclusive jurisdiction over proceedings, concerning children suffering from epilepsy, nervous and mental defects, then admission of mentally defective or epileptic children to any State or municipal institution from said judicial district shall be exclusively vested in said court."

211. Q. What classes of cases of children other than these already named, *i. e.* delinquent, dependent, neglected, the mentally defective, the crippled, and of adults contributing to the delinquency or neglect of a child, does the standard Juvenile Court Act include within its jurisdiction?

A. It adds several other classes of cases:

(1) Children whose custody or the guardianship of whose person is subject to controversy or is to be determined;

A Standard Juvenile Court Law published by the National Probation Association, Inc., 1926, p. 12.

(2) Proceedings to determine the paternity of any child alleged to have been born out of wedlock and to provide for its disposition and support;

(3) Adoption proceedings.

212. Q. Are any of these included within the jurisdiction of the juvenile court in Pennsylvania?

Sec. 1, Act of July 17, 1917, P. L. 1015, amending Sec. 11, Act of July 12, 1913, P. L. 711.

Act of May 11, 1923, P. L. 201; Act of April 4, 1925, P. L. 127.

A. No. There is occasionally some confusion on this point in Philadelphia, owing to the fact that the Municipal Court has exclusive jurisdiction "in all proceedings for the custody of children" and from 1923 to 1925 had concurrent jurisdiction in adoption cases.

213. Q. Are not "custody" cases included in the jurisdiction of the juvenile court in Pennsylvania?

Sec. 1, Act of July 17, 1917, P. L. 1015, amending Sec. 11, Act of July 12, 1913, P. L. 711.

Commonwealth, ex rel., Kelley v. Kelley, 83 Super. Ct. 17.

Commonwealth ex rel., Weber v. Miller, 84 Super. Ct. 409.

A. No, they belong in the jurisdiction of the Court of Common Pleas. In Philadelphia, however, exclusive jurisdiction in these cases is lodged with the Municipal Court. In at least two recent cases, later appealed, this court had confused the requirements of the Act of June 26, 1895, P. L. 316, in the award of custody of a child in a contest between parents with the requirements of the Juvenile Court Act regarding the commitment of delinquent, incorrigible, dependent and neglected children.

In the Municipal Court's report for 1924 (page 17) it reported that 8 per cent. of the family cases referred to court "on new charges of dependency and disposed of in 1924" were "custody" cases. The Court's 1925 report (page 65) classifies 283 cases involving "questions of custody" under the general head of dependency and neglect.

## VIII. THE LEGISLATIVE POWER TO CREATE SEPARATE JUVENILE COURTS.

214. Q. How do juvenile court judges in Pennsylvania come into office?

Act of May 25, 1921, P. L. 1163.

A. Judges of Courts of Quarter Sessions are elected for terms of ten years in the judicial districts, of which there are 56 in the State. They follow county lines and with a few exceptions contain only one county.

Act of July 1, 1919, P. L. 708.

Outside of Pittsburgh and Philadelphia the law requires that the powers of the juvenile court "may be exercised by any one or more judges . . . who may be assigned for the purpose."

Pennsylvania State Manual p. 352, formerly Smull's Legislative Hand Book.

In 35 districts there is but one judge; in 13 districts there are 2 judges; in 5 districts there are 3, and in one district 5.

Sec. 2 Act of July 12, 1913, P. L. 711; Act of June 27, 1923, P. L. 856.

In Philadelphia the 10 judges of the Municipal Court are elected for ten-year terms "if they so long behave themselves well." The president judge selected by his associates, designates one of the 10 to hold juvenile court. The law requires that the juvenile court judge shall be assigned for a period of one year or longer in the discretion of the president judge.

Sec. 2, Act of May 5, 1911, P. L. 198; Act of July 21, 1919, P. L. 1065.

In Allegheny County the 6 judges of the County Court are elected for ten-year terms and one of the 6 is designated by the president judge, who is himself selected on the basis of priority, to sit in juvenile court for the period of one year or longer in the discretion of the presiding judge of the County Court of Allegheny County.

215. Q. Is it important that specially qualified persons be selected as juvenile court judges?

Flexner and Oppenheimer: The Legal Aspect of the Juvenile Court, U. S. Children's Bureau Publication, No. 99, p. 13.

A. Yes. "The qualifications of the judge who hears juvenile cases have more to do with the success or failure of the work than any other single element."

216. Q. Is there any way under the present laws by which a person with special qualifications could be selected to serve as a juvenile court judge in Philadelphia and in Allegheny Counties?

A. Not unless all of the judges were nominated and elected with this one duty in mind; for it is not known in advance in what department of the court a candidate, if elected, will sit.

217. Q. Is there any way under the present laws by which in the other judicial districts, persons with special qualifications could be selected?

A. Not unless the community gave precedence to the qualifications necessary for the successful discharge of the duties of judge of the juvenile court above the qualifications necessary for the proper discharge of the duties involved in sitting in Common Pleas, Quarter Sessions, Oyer and Terminer and, in all but twelve districts, in the Orphans' Court.

218. Q. Are judges of the county courts local or state officials?

Price v. Walton, 49 Super. Ct. 1.

A. State officials.

219. Q. Are the municipal and county court judges state or local officials?

Act of May 25, 1921, P. L. 116.

A. State officials.

220. Q. How do justices of the peace, aldermen and magistrates come into office?

Constitution, Art. V, Sec. 11, as amended Nov. 2, 1909.

A. Justices of the peace and aldermen are elected in boroughs, townships and wards outside of Philadelphia. They are commissioned as peace officers by the Governor of the State for six-year terms.

Act of Feb. 5, 1875, P. L. 56, Act of Feb. 1, 1887, P. L. 3.

The 28 magistrates in Philadelphia are elected for five-year terms.

Act of April 1, 1909, P. L. 83.

The 8 police magistrates in Pittsburgh are appointed by the mayor, subject to the approval of the select council. They hold office, subject to removal by the mayor, during his term of office.

221. Q. Are they required to be learned in the law?

A. No.

222. Q. Do their courts keep records?

Report of the Crimes Survey Committee, Philadelphia Law Association, p. 69.

A. No, not in the sense of being courts of record in which testimony is recorded. The Philadelphia magistrates are required by law to keep a criminal docket.

Act of June 8, 1893, P. L. 399.

In the cases of commitment of children over sixteen years of age to various institutions, it is required that certain kinds of information must accompany the child's commitment. It was provided in 1893 that when a magistrate committed a vagrant, incorrigible or vicious child, or one duly convicted of crime, to a society for the protection of children, he must "annex to his commitment the names and residences of the different witnesses examined before him and the substance of the testimony given by them respectively on which the said adjudication was founded."

223. Q. Could the General Assembly, under the present constitution, create a separate court in each judicial district which would have exclusive jurisdiction in all cases of child offenders?

A. Four sections in the constitution apply to this point:

Article V, Section 1. "The judicial power of this Commonwealth shall be vested in a Supreme Court, in Courts of Common Pleas, Courts of Oyer and Terminer and General Jail Delivery, Courts of Quarter Sessions of the Peace, Orphans' Courts, Magistrates' Courts, and *in such other courts as the General Assembly may from time to time establish.*

Article V. Section 4. "Until otherwise directed by law, the Courts of Common Pleas shall continue as at present established, except as herein changed; . . . "

Article V. Section 9. "Judges of the Courts of Common Pleas learned in the law shall be judges of the Courts of Oyer and Terminer, Quarter Sessions of the Peace and General Jail Delivery, and of the Orphans' Court, and within their respective districts shall be Justices of the Peace as to criminal matters."

Article V. Section 26. "All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction and powers of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process and judgments of such courts, shall be uniform; and the General Assembly is hereby prohibited from creating other courts to exercise the powers vested by this constitution in the judges of the Courts of Common Pleas and Orphans' Courts."

Thus far these provisions of the constitution

Commonwealth v. Fisher, 213 Pa. 48.

Commonwealth v. Fisher, 27 Super. Ct. 175.

have not been construed so far as courts hearing children's cases are concerned. It will be recalled that one of the strong points made in Commonwealth v. Fisher was that no new court had been created and that as the constitution does not define or limit the jurisdiction of the Court of Quarter Sessions, it could be exercised under the statutory requirements of the Juvenile Court Acts.

These constitutional provisions have, however, been construed in connection with the organization of new courts for other purposes. The leading cases in which these points have arisen are:

58 Pa. 226.
234 Pa. 347.
241 Pa. 213.
243 Pa. 603.

Commonwealth v. Green;
Gottschall, appellant, v. Campbell;
Commonwealth v. Hopkins, appellant;
Gerlach, appellant, v. Moore.

Commonwealth v. Green, 58 Pa. 236.

The first of these opinions antedates the adoption of the present constitution but the significant phrase "and in such other courts as the General Assembly may from time to time establish" appeared essentially in that form in the previous constitution, and is construed in this case. The constitutionality of the Act of April 18, 1867, P. L. 91, was in question. Of this act, Chief Justice Thompson said: "This act, I think I may safely say, is the most extraordinary legislative performance on our or any other statute book." It provided for special criminal courts for Schuylkill, Dauphin and Lebanon Counties. In draftsmanship it seems to have been the subject of much controversy both in the courts and in the subsequent session of the legislature which tried to repeal it.

The majority of the judges of the Supreme Court held that whatever its other shortcomings might be, it was not unconstitutional except in so far as it attempted to give this court exclusive jurisdiction in all criminal matters and completely to deprive the other established criminal courts of their jurisdiction.

The decision, written in 1868 by Justice Sharswood, pointed out in this case: "The main point of contention is whether the Legislature can transfer any part of the criminal jurisdiction now vested in the courts named in the constitution, to any other court. It must be admitted that if the framers of the constitution intended to establish an unalter-

able judicial system, they have not expressed any such intention . . . It may be fully conceded that the Legislature cannot abolish any of the courts mentioned in this article, nor divest them of their entire jurisdiction, which would practically effect the same result . . . The words 'and in such other courts' point only to a partition of powers . . . ''

Act of February 24, 1806, 4 Sm. L 276.

Referring then to a case arising from an older law changing the powers of the Supreme Court under the Constitution of 1790, Justice Sharswood quoted Chief Justice Tilghman as follows: ''It is contended that the constitution secures to this court every power which they have been accustomed to exercise . . . I think the argument will prove too much. It cannot reasonably be supposed that the powers exercised by all of these courts were of so perfect a nature as to make it worth while to guard them by a fundamental article. On the contrary, to every man of reflection, it must have been evident, that in the course of time alterations in these powers would be necessary; and that an attempt to render them unchangeable must end in the destruction of the constitution itself.''

Commonwealth, ex rel., O'Hara v. Smith, 4 Binn. 116.

As a remedy to the evils of the diverse courts which seem to be arising under the constitution of 1838, stands Section 26 of Article V. of the Constitution of 1874. Since that time, any new courts created must meet the requirements stated therein. How have these sections been construed?

Gottschall, appellant v. Campbell 234 Pa. 347.

These questions are fully discussed in the case which came up to test the constitutionality of the Act of May 5, 1911, P. L. 198, by which the County Court of Allegheny County was created.

Action was initiated through a tax payer's suit. A bill in equity averring that the act was unconstitutional was filed against the county commissioners to restrain them from expending any of the funds of the county, in providing accommodations for the new court. The bill was dismissed by Common Pleas Court No. 2 of Allegheny County and the case was appealed to the Supreme Court. In an opinion concurred in by Justices Fell, Brown and Elkin, delivered January 2, 1912, Justice Potter said: ''The power of the Legislature to establish courts other than those named in the constitution cannot be questioned . . . No one can

fairly read this section (Sec. 1, Art. V.) of the constitution and maintain that the courts therein named are the only ones which the Legislature was empowered to establish. A reasonable construction of this language, is that the power of the Legislature extends not merely to the establishment of other courts similar to those enumerated (*i. e.* additional judicial districts and additional Common Pleas Courts within them), but that it also includes the power to establish courts of a grade and character different from those expressly set forth. It is a cardinal principle in the construction of constitutions that the language is to be interpreted in its plain and natural sense as understood by the people who adopted it. So interpreted, the power to create a court such as that provided for in the act before us, is ample. It is under the power given by this section, that the Legislature established the Superior Court. It would be late in the day to now challenge the existence of this power, sixteen years after its first exercise in the creation of the Superior Court. The same power is adequate to establish county courts, and prescribe their jurisdiction . . .

"As to the provision of Section 26, Article V, that all laws relating to courts shall be general and of uniform operation, it is evident that this requirement is fairly met when such laws are general and of uniform operation as applied to a particular class or grade of courts. This is consistent with the further requirement in the next clause, that 'the organization, jurisdiction and powers of all courts of the same class or grade, so far as regulated by law, and the force and effect of the processes and judgments of such courts, shall be uniform.' It is clear that uniformity within the respective classes or grades of courts is what the constitution requires; otherwise, the end and aim of classification would be defeated . . .

"Another point pressed in the argument for appellant is that the creation of this new county court is prohibited by the last clause of Section 26, which prevents the General Assembly from creating other courts, to exercise the powers vested by the constitution 'in the judges of the Courts of Common Pleas and Orphans' Courts.' It is contended that this means the powers vested in the courts, and not in the judges of the courts. Such a construction nullifies the plain inference to be

drawn from the language of Section 4, which is that, when directed by law, changes may be made in the Common Pleas. It is also in opposition to the provisions of Section 1 of Article V, which expressly authorized the Legislature to establish from time to time other courts that those already created. As the court below in its opinion well says: 'It would seem, therefore, that the true construction of this clause of Section 26 is to be obtained by taking its language literally, and holding that it applies only to the powers vested in the judges of the Courts of Common Pleas; as, for example, the power of sitting in the Oyer and Terminer; but does not directly vest any powers in the Courts of Common Pleas which may not be taken away by law.' Unquestionably certain powers were conferred upon the judges as such, and not upon the courts in which they sat. In an earlier clause in Section 26, there is a reference to the powers of the courts, and the contrast between the wording of this phrase and that which refers to the powers vested in the judges is significant and adds force to the argument that the constitution means precisely what it says when it prohibits interference with the powers vested in the judges, rather than with the powers of the courts. We are not at liberty to adopt a construction which disregards the exact words of this section, particularly when it would create an inconsistency with other sections of the constitution. We are bound to sustain a construction which will give effect to all provisions, if possible.''

Later, in discussing the question of procedure in this newly created County Court which was given concurrent jurisdiction in certain types of cases with the Common Pleas Courts, Justice Potter said: ''The suggestion that the law is not uniform, because the procedure provided for the County Court differs from that which obtains in the Common Pleas, is without merit. It was intended that it should be more simple, and very properly so; that is one of the obvious advantages of the legislation.''

In closing the opinion on this case, Justice Potter wrote: ''That one who asks to have a law declared unconstitutional takes upon himself the burden of proving beyond all doubt that it is so, has been so often declared that the principle has become axiomatic. In Sharpless v. Mayor of Philadelphia, 21 Pa. 147, Mr.

Justice Black said (p. 164): 'There is another rule which must govern us in cases like this; namely, that we can declare an Act of Assembly void, only when it violates the constitution clearly, palpably, plainly; and in such manner as to leave no doubt or hesitation in our minds. This principle is asserted by judges of every grade, both in the Federal and in the State Courts.' And again in Erie and Northeast R. R. Co. v. Casey, 26 Pa. 287, the same justice said (p. 300): 'The right of the judiciary to declare a statute void, and to arrest its execution, is one which, in the opinion of all courts, is coupled with responsibilities so grave that it is never to be exercised except in very clear cases; one department of the government is bound to presume that another has acted rightly. The party who wishes us to pronounce a law unconstitutional, takes upon himself the burden of proving, beyond all doubt, that it is so.' In Hilbish v. Catherman, 64 Pa. 154, Mr. Justice Agnew said (p. 159): 'We cannot declare this act unconstitutional unless we can say, in the language of Judge Tilghman, that "its violation of the constitution is so manifest as to leave no reasonable doubt:" Com. v. Smith, 4 Binn. 177.' And Chief Justice Sharswood said, in Com. v. Butler, 99 Pa. 535 (540): 'To justify a court in pronouncing an act of the legislature unconstitutional and void, either in whole or in part, it must be able to vouch some exception or prohibition clearly expressed or necessarily implied. To doubt is to be resolved in favor of the constitutionality of the act.'

"It may be conceded that some of the clauses of the constitution here involved, are obscure, and that some of the questions here presented are not free from difficulty; but that is not sufficient to justify striking down the statute. We may rest the consideration of this case upon the conviction that it has not been plainly shown that any vital feature of the statute under consideration offends against any specific provision, or any necessarily implied prohibition, of the constitution; and therefore the act must be sustained. The assignment of error is overruled and the judgment is affirmed."

With regard to the construction of Section 26, Article V, Justice Von Moschzisker, Mestrezat and Stewart dissented. Justice Von Moschzisker wrote. "To my mind Section 26, Article

V, expressly and unequivocally forbids the creation of other courts to exercise the powers vested in the judges, it plainly means to in- of the courts are administered by the judges, and when the constitution refers to the powers vested in the Judges, it plainly means to include all the powers given to the courts. In this connection it is interesting to note from the records of the constitutional convention that the prohibition against the creation of other courts to exercise the powers vested in the Common Pleas, was originally part of the particular section in reference to the courts of Philadelphia and Allegheny Counties and was removed therefrom and placed in Section 26 so that the restriction might be general as to all Common Pleas Courts; and further that the word 'courts' was changed to 'judges of the courts,' evidently to meet the expressed objection that the former was not sufficiently comprehensive to take in the criminal jurisdiction of such judges (see Debates, Vol. 6, p. 256, p. 507-9 and pp. 544-5). To refer to the 'judges' as comprehending the 'court' is a common method of expression which was intentionally employed by the draftsmen of the constitution (Vol. 6, pp. 544-5). It is quite certain that the expression would be thus accepted by the average man, and that the language used was so understood by the electors who finally passed upon and accepted the constitution cannot reasonably be doubted.

"In my opinion the legislative authority to make changes by law in the jurisdiction of the present courts, and the power to create other courts, are always subject to the constitutional limitations contained in Section 26. This act not only gives to the court which it seeks to create many of the powers vested by the constitution in the Common Pleas, but it further violates the prohibitions of the section in question when it takes from the Quarter Sessions of Allegheny County and transfers to the new court all jurisdiction in non-support and certain other cases; thus in effect depriving the 'judges of the Courts of Common Pleas' sitting in the criminal courts of certain powers indirectly but nevertheless undeniably vested by the constitution in such judges as *ex-officio* judges of the latter courts (Sec. 9, Art. V.), and making the jurisdiction and powers of Quarter Sessions of that county different from those of

all other courts of the same class or grade in the State. For these reasons and for others which might be stated I am obliged to dissent."

Commonwealth v. Hopkins, appellant, 53 Super. Ct. 16; 241 Pa. 213.

An appeal from an order made in a desertion case by the Allegheny County Court was taken to the Superior Court a little later and again questions of the constitutionality of the act which invested this court with exclusive jurisdiction in such cases were raised. Justice Head delivered the opinion of the court February 17, 1913. It was appealed and affirmed without comment May 22, 1913, by the Supreme Court. In his opinion Justice Head set forth: "Article V of the Constitution deals with the judicial branch of our government. It contains twenty-seven separate sections. It opens with the declaration that 'the judicial power of this Commonwealth shall be vested in' the several courts therein designated 'and in such other courts as the general assembly may from time to time establish.' Here, then, is a clear and express recognition of the legislative right to create 'other courts.' When lawfully created they take their place in the class of courts in which 'the judicial power of this Commonwealth shall be vested.' From the expressly recognized right to create new courts we naturally and necessarily deduce the further legislative right to define the jurisdiction of the courts created save in so far, and so far only, as such right may be denied or limited by the constitution itself. Certainly that instrument does not undertake to define or describe affirmatively what jurisdiction or powers the Legislature may confer upon the courts which it may from time to time establish. How far does it prohibit legislative action in this direction?

"We have quoted the clause which prohibits the General Assembly 'from creating other courts to exercise the powers vested by this constitution in the judges of the Courts of Common Pleas and Orphans' Courts.' What is the nature of the powers thus referred to as being vested by the constitution in the judges of the courts named? We have seen the declaration in the first section of the article that the judicial power of the Commonwealth shall be vested in, *inter alia*, Courts of Common Pleas and Courts of Quarter Sessions of the Peace. The Legislature may not therefore deny to these courts their proper share in the judicial power of the State. Section 9 provides that

judges of the Courts of Common Pleas learned in the law shall be judges of the Courts of Oyer and Terminer, Quarter Sessions of the Peace, etc.' The Legislature may not say otherwise. Section 10 affirms the right, in the judges of the Common Pleas, to issue writs of certiorari to magistrates and inferior courts not of record, and this right the Legislature must respect. These sections, and one or two more that might be quoted, clearly indicate the intent of the framers of the constitution to deal only with a few matters that were considered fundamental and, only in such respects, did the constitution itself vest in the courts named or the judges thereof powers, which it finally declared the Legislature might not thereafter take from them. But the article as a whole is pervaded with repeated recognitions of the right of the Legislature, as occasion might arise, to deal with the structure and jurisdiction of the courts and to alter and change the procedure therein. A construction of Section 26 which would deny to the Legislature the right to take away from the Court of Quarter Sessions the power to grant liquor licenses, or to open and vacate roads and highways, and vest such power, by general law, in some other tribunal, would make it impossible for our people to live under a written constitution. It is certainly no new doctrine to hold that legislation of that character has always been regarded as within the powers of the General Assembly . . .

"In Commonwealth v. Hipple, 69 Pa. 9, Mr. Justice Agnew said: 'The constitution having neither defined nor limited the jurisdictions of the courts named therein or of those to be afterwards established, the power to create new courts and new law judges carried with it the power to invest them with such jurisdictions as appear to be necessary and proper, and to part and divide the judicial powers of the State so as to adapt them to its growth and change of circumstances.'

"In discussing the right conferred by the Act of May 29, 1901, P. L. 327, upon Courts of Quarter Sessions to issue restraining orders in the nature of injunction, Henderson, J., speaking for this court in Commonwealth v. Andrews, 24 Pa. Superior Ct. 571, said: 'Judicial power is vested in the Court of Quarter Sessions by Section 1 of Article V, of the Constitution, but the jurisdiction of the court is not defined

therein. Its jurisdiction is fixed by the common law and the statutes declaring its powers. It is clearly within the power of the Legislature to enlarge or restrict that jurisdiction.'

"We have thus seen that under earlier constitutions the right of the Legislature to change the organization and powers of existing courts had been fully considered and recognized. The framers of our present constitution were familiar with the landmarks upon legislative action. In rewriting the fundamental law they contented themselves with a few declarations as to the rights or powers that should unchangeably reside in designated courts or judges thereof. In respect to these and these only was the General Assembly prohibited from interfering, and thus the later decisions have discovered no sufficient cause for a departure from the sound reasoning of the earlier ones.

"The constitution conferred no power on the Court of Quarter Sessions to hear and dispose of desertion cases. It set up no barrier in the way of the Legislature creating a new court and conferring upon it jurisdiction to determine such cases. We must therefore hold that the County Court of Allegheny County had jurisdiction to make the order appealed from."

The act creating the Municipal Court of Philadelphia was signed by the Governor on July 12, 1913. In September of that year a taxpayer's suit, similar to Gottschall, appellant v. Campbell, was instituted in Common Pleas Court, No. 4, Philadelphia County. The constitutionality of the act was assailed on many counts. The Common Pleas Court dismissed the bill in equity to restrain the county commissioners from expending funds for the operation of the court and the plaintiff then appealed. John H. Fow and Henry M. Stevenson represented the appellant, while John G. Johnson, John C. Bell, George Q. Horwitz and James Gay Gordon defended the constitutionality of the act. The case was argued January 5, 1914, and decision rendered on January 9, 1914, by Mr. Justice Elkin in part as follows:

Gerlach, appellant v. Moore, 243 Pa. 603.

"The vital and controlling questions raised by this appeal have been decided adversely to the contentions of appellant by this court in two recent cases: Gottschall v. Campbell, 234 Pa. 347; Com. v. Hopkins, 241 Pa. 213. The last case cited was an appeal from the Superior Court and the order of that court was affirmed

here in the opinion of Judge Head. What was decided in these cases must be accepted as settled law if the doctrine of *stare decisis* is to have any binding force in determining questions involving constitutional construction in our State. The questions raised in the cases cited were not free from doubt or difficulty, and there was and is a difference of opinion as to the proper interpretation of the constitutional provisions involved. These doubts were resolved in favor of the constitutionality of the Allegheny County Court Act, and in sustaining that act it was necessary to consider and decide most of the questions raised by the present appeal. It would serve no useful purpose to travel over the ground again by elaborating the discussion and emphasizing the views so well expressed by Brother Potter of our own court in the Gottschall case, and by Judge Head of the Superior Court in the Hopkins case. The basic principle of these decisions was that the constitution in express language gave the Legislature power to create from time to time courts other than those enumerated in the organic law, and this power having been expressly conferred in the first section of the judiciary article, nothing contained in the subsequent sections of the article dealing with the organization, jurisdiction and powers of courts, was sufficient to deprive the legislative branch of government of the power to create courts of a different class or grade from those expressly enumerated. The power to create 'such others as the Assembly may from time to time establish' is the same in the constitutions of 1790, 1838 and 1874. Under the earlier constitutions this power was challenged by proceedings in court, as it is now, but this court consistently held the view that the Legislature had the power to divest the courts enumerated in the constitution of some of their jurisdiction and vest it in courts from time to time established, or may vest a limited concurrent jurisdiction in courts thus created: Com. v. Zephon, 8 W. & S. 382; Com. v. Martin, 2 Pa. 244; Com. v. Green, 58 Pa. 226; in re Application of Judges, 64 Pa. 33; Com. v. Hipple, 69 Pa. 9. In passing upon the constitutionality of the Allegheny County Court Act, in the two recent cases above referred to, this court adopted and followed the reasoning of the learned justices who wrote the opinions in the

earlier cases. There was a difference of opinion in this court when the earlier cases were decided, and there is now, as to the power of the Legislature to divest courts enumerated in the constitution of any part of their jurisdiction and vest it in courts established by the legislature from time to time, but these doubts and differences were resolved in favor of sustaining the constitutionality of the earlier acts, just as in the recent cases they were resolved in favor of sustaining the power of the Legislature to create courts of a different class or grade from those enumerated in the constitution, with a limited or concurrent jurisdiction. This court in the recent cases finally decided, although all the justices did not agree, that nothing contained in the present constitution required a departure from the settled rule of construction under the earlier cases. This is the answer to the main contentions pressed upon us by the learned counsel for appellant in the present case."

Mr. Justice Von Moschzisker gave as part of a concurring opinion: "It is settled in Pennsylvania that the doctrine of *stare decisis* applies to and controls constitutional questions so long as the original cases are not formally overruled: . . . In its main features the statute in question is consistent with, and the legislation simply follows the logic of, our decisions in the Allegheny County Court cases. Although the construction there placed upon the organic law of the State may not accord with my own view, yet, while those authorities remain they must be read with the constitution as though part of it, and their binding force and effect cannot properly be questioned by anyone, least of all by a member of the court that announced them; therefore, under the doctrine of *stare decisis*, and upon that ground alone, I concur in the present judgment."

224. Q. Have the judicial districts of the Commonwealth been classified so that different types of organization of the courts may be created in them without violating the constitutional prohibition against local and special legislation (Art. III, Sec. 7), and the constitutional requirement of uniformity in the operation of the courts (Art. V, Sec. 26.)?

Gottschall, appellant v. Campbell, 234 Pa. 347.

A. With reference to the County Court of Allegheny County the Supreme Court said: "The

objection that the legislation is local and special would be unanswerable, were it not for the fact that the constitution itself has made a classification with reference to the creation, regulation and powers of the courts, in which the County of Allegheny is treated as a distinct division, and the County of Philadelphia is another, and in each of which counties the courts as to their needs and requirements are distinguished from the remaining counties in the State."

Gerlach, appellant v. Moore, 243 Pa. 603.

In the Philadelphia Municipal Court case this opinion was reaffirmed: "That the Legislature had the power to create a court for Allegheny County, and another court of a different class or grade for Philadelphia County, according to their respective needs, was decided in the Gottschall case, and for the purposes of this appeal nothing further need be said."

225. Q. What provision does the standard Juvenile Court Act make for the appointment of juvenile court judges and probation officers?

A. It provides for the appointment in each county of a juvenile court judge by the Governor of the State. "All probation officers shall be appointed from an eligible list secured through competitive examination. The examinations given for the purpose of establishing such eligible lists shall have reference to the education, previous experience, ability, personality and character of the candidates." The actual power of appointment of probation officers from this list is lodged with the judge and the power of removal at any time is given him.

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